in the original sanctioned budget. Hence an additional allotment of Rs. 1,442 is required.

Grant was put and carried.

2. Rs. 1,353—by transfer from '22 Industries' to '14—Education' (Cranganur).

Rao Sahib I. N. Menon *(Director of Public Instruction).*—Sir, I rise to move for an additional allotment of Rs. 1,353 by transfer from '22-Industries-(h)-Commercial Class' to '14-Education—1—Secondary Education—Boys' Schools'. This transfer is required purely as a matter of administrative facility and therefore it is strictly speaking not an additional grant. I request the House to be pleased to grant the additional allotment by transfer.

Grant was put and carried.

3. Rs. 3,368—4—0 by transfer from '32—Industries' to '20—Education'.

Rao Sahib I. N. Menon *(Director of Public Instruction).*—Sir, I rise to move for an additional allotment of Rs. 3,368-4-0 by transfer from '32—A—Industries Grant to aided Schools' to '20—3—Secondary Boys' Schools' and '20—4—Secondary Girls' Schools'. As the matter has been explained fully in the note to the Standing Finance Committee, I request the House to be pleased to grant the additional allotment by transfer.

Grant was put and carried.

The Cochin Tenancy Bill.

Mr. President.—Mr. P. Kumaran Ezhuthassan has written a letter suggesting that the consideration of the Cochin Tenancy Bill may be taken up after the Municipal Bill is passed. So far as the Government's position is concerned, it is a very simple one. When once a policy is adopted by Government with regard to certain specific recommendations, the discussion in the Council would be restricted only to the actual recommendations made by Government and to the consequential amendments or amendments strictly arising out of those recommendations. In other words only such of the clauses to which Government has moved amendments will be before the House and even with regard to the amendments which the

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non-official members can move, the scope of the amendments is restricted in that the amendments should be consequential or directly arising out of those amendments. For example, if the Government say that the Regulation may be applied to Kanoms of 1090, you may say, 1080 or 1070, 1100 etc., i. e., you cannot move an amendment the subject matter of which is entirely different and removed from the scope of the Government amendment. The provision is most simple and in view of the considerable delay this legislation has been held out and the anxiety of the Hon'ble Members to get a decision on this, I think, they shall stick up to the programme. The amendments have been before the members, some time now.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—If some time is given, we may have to bring in some amendments on the lines pointed out. The Municipal Bill may be taken up before.

Mr. President.—It is a very long Bill and we do not want to take this Bill to the end. So far, a number of amendments have been received and I think all of them are out of order. They are entirely beyond the scope of the amendments of the Government.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—If some time is given to us, we may be able to move proper amendments which the Government may very well accept.

Mr. President.—The Law Member will explain in brief the scope of the Government amendments before he moves them one by one.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, as the message of the Diwan has indicated, these amendments that are now proposed to be moved by Government have been tabled with a view to secure what the Government consider a more equitable position with regard to the relations between the tenant and the Jenmi. Hon'ble Members, I am sure, will have noticed that the Bill as passed by this Council has taken away substantial rights of the Jenmis, long-standing vested rights of the Jenmis. While the tenants' case deserves encouragement and support, it would not be fair to ignore the case of the Jenmis altogether. So the Government thought of introducing some amendments so as to bring about a sort of amicable and satisfactory *via media* between the two extremes. While the amendments that are now proposed by me do not

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substantially and seriously detract from the rights that have been safeguarded by the Bill passed, some ameliorative sort of considerations will be secured by the passing of these amendments. When I take the Hon'ble Members very briefly through the amendments, the meaning of what I have just now stated will be clear.

The first one is merely a verbal amendment and does not need any details. The second one is one of the important amendments, viz., "the provisions contained in sections 24 to 36 both inclusive of this Act shall apply only to Kanom tenants who by themselves or through their predecessors-in-interest have uninterruptedly held the holding under kanom tenures created on or before the 8th day of Thulam 1090". The Hon'ble Members will remember that according to Act II of 1090, only kanom tenants whose tenures were over 30 years prior to the passing of that Act, that is beyond 1060, were granted the right of irredeemability by that Act. According to the Bill as was passed by the Council all kanom tenants without consideration of any time, will be granted the right of irredeemability. In the message of the Diwan it was made obvious that whatever may be the arguments that may be advanced in favour of kanoms and kanom tenants that existed before 1090, it is obvious that the kanom transactions that came into existence after 1090, i. e., after the public were well aware of the provisions contained in Act II of 1090, those transactions certainly could not be considered at all to stand on a par with the transactions that existed before 1090. Now that being so, Government consider it would be highly inequitable to consider all kanoms alike irrespective of the period or the time at which they came into existence. According to the Bill, all kanoms, even though it may be only 24 hours old, will become automatically irredeemable. Such a right cannot be claimed by a kanom tenant, who has obtained kanom tenure after knowing fully well the important provisions contained in Act II of 1090 and subject to the provisions of that Act. That is one of the important amendments. The Hon'ble Members will, I am sure, consider the *via media* struck by the Government as quite fair. Instead of the 30 years' period to which is attached the irredeemability, the Government now say that all kanom tenures that came into existence before 1090, should have irredeemability, but not kanom tenures that came into existence after 1090. It is very doubtful whether there is any practical difficulty. So far as the Government are aware, there exists hardly any kanoms that came into existence after 1090. So the difference will be only more or less of a verbal nature.

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The next amendment is to section 25. Sub-clause (1) reads "on the expiry of the demise, the kanam tenant shall be liable to eviction from the whole or a portion of his holding as the case may be, for any of the following causes:—

(a) If the holding or a portion thereof is required by the landlord for the bonafide purposes of extending his own residential house or building a new house for his residence:" etc.

This is an important amendment. According to Act II of 1090, this right of irredeemability to tenants was given, but certain provisions were introduced in that Act granting the Jenmi a right to evict the tenants in certain contingencies. These contingencies mainly correspond to those that have been provided for in the Malabar Tenancy Act that was recently passed. Section 20 of the Malabar Tenancy Act corresponds more or less to section 24 of our Act. Clause (b) is "If the holding or a portion thereof is required by the landlord for bonafide agricultural improvement which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking:

Provided that, if the landlord fails to carry out the improvements within six years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure."

Now to give an idea of the sweeping changes that were introduced by this Council, I have to read only two sections, the section as passed by this Council and the amendment that is now offered which practically corresponds to section 20 of the Malabar Tenancy Act. The section as passed by the Council is as follows:—

"No suit for the eviction of a kanom tenant shall lie at the instance of the landlord except on one or more of the following grounds:—

(1) That the tenant has wilfully denied the title of the landlord before the date of such suit.

Explanation:— A denial of the landlords's title under a bonafide mistake of fact or law is not wilful within the meaning of this clause.

(2) That the tenant has committed or permitted such acts of waste as are calculated to impair materially and permanently the value or utility of the holding:

Provided the landlord has served a notice in writing on the tenant specifying the waste complained of and the tenant has failed to remedy the same within a reasonable time.

(3) That the tenant has collusively allowed a stranger to encroach on the holding adversely to the interests of the landlord."

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They were the only three contingencies that were retained. Now my amendment covers a few more.

I shall read the present amendment:—

"(1) On the expiry of the demise, the kanom tenant shall be liable to eviction from the whole or a portion of his holding as the case may be for any of the following causes:—

(a) If the holding or a portion thereof is required by the landlord for the bonafide purposes of extending his own residential house or building a new house for his residence."

I am sure all Hon'ble Members will agree with me that this is a very fair and equitable provision, a provision which corresponds to one of those provisions contained in section 20 of the Malabar Tenancy Act.

Secondly, clause (b) reads thus:—

"If the holding or a portion thereof is required by the landlord for bonafide agricultural improvement which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking:"

That again is clearly a very fair provision. It may be that the tenant is not at all coming forward to improve the land, because it may be costly. Suppose the landlord is willing to incur the expenditure, should he not be allowed to do so? If the landlord is not allowed, the land will go to waste and it will be a loss to both the landlord and the tenant. So my amendment is that the landlord can improve the land in case the tenant does not do it. Therefore, I hope the Hon'ble Members will agree with me with regard to the utility and fairness of that clause.

Clause (c):— "If the kanam tenant refuses to pay enhanced michavaram under the provisions of sections 33 and 34."

That is to say in certain eventualities, which I may at once say, has been found to be more imaginary than real, the Jenmi is entitled to claim michavaram. From my experience extending to several decades, there hardly ever has been a single case of enhanced michavaram. It will never do harm. I am sure that this amendment will be passed by the Council.

Clause (d):— "If the kanam tenant neglects or refuses to pay renewal fees and takes a renewal within one year from the date of expiry of the lease, provided that the neglect or refusal is not due to bonafide difference between the kanam tenant and the landlord as to the terms of the renewal.

When the tenant has incurred forfeiture for non-payment of renewal fees and the landlord sues to eject the tenant, if, at the first hearing of the

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suit or within such time as the Court may think fit to fix in the circumstances of the case, the tenant pays into the Court the renewal fees and other dues in arrears together with the interest thereon and the landlord's cost of the suit, the Court shall pass an order relieving the tenant against forfeiture and thereupon the tenant shall hold the land as if the forfeiture had not occurred."

That is that provision will apply to continuous defaulters only who refuse to pay the money or even neglect to pay even after a suit. Obviously it is a very fair provision which exists in the Madras Act. I think it is equitable and quite reasonable.

Clause (e): "If the kanam tenant refuses to pay additional kanam subject to a maximum of twelve times the enhanced michavaram for which the landlord is prepared to pay interest at the rates fixed for the old kanom."

That again is an incident attached to the renewal of kanom. In certain cases, according to law, the Jenmi is entitled to claim an enhanced kanom amount. In certain other cases, very rarely, I do not think there will be half-a-dozen cases of this nature, although there may be very good cause for the Jenmi when the tenant refuses unreasonably to pay such additional kanam amount, such refusal may be one of the reasons which will entitle the Jenmi to evict the tenant.

Clause (f):— "If the kanam tenant fails to pay michavaram during the currency of the lease for three years consecutively, notwithstanding any express demand in writing made at any time after the first year's arrears shall have accrued"

Hon'ble Members will agree with me that a tenant who persistently makes the default of the little amount that may be due to the Jenmi and who even after formal notice, issued to him through court, refuses to pay the arrears, then that tenant does not require much generosity. It is a very bad business for the tenant himself to make the arrears accumulate. The jenmi may sue and sell him out. So both from the view-point of the jenmi and from the view-point of the tenant, though it may appear irksome to the tenant, it is really a boon to him. This measure corresponds to the Malabar Act and is highly necessary.

"(g) If the kanam tenant wilfully denies the landlord's title."

This section has already been passed by the Council.

(h) "If the kanam tenant intentionally and wilfully commits such acts of waste as are calculated to materially and permanently impair the value and utility of the holding."

This, I say, is covered by the Bill that was passed.

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'(2) During the currency of the lease, the kanam tenant shall also be liable to eviction under clauses (g) and (h) in the foregoing sub-section (1) of this section.'

That again refers to waste. It is rather an important provision which Government thinks to introduce.

The amendment of section 48 is an amendment which is really in favour of the tenant.

"Section 48. (1). It shall be competent to the land-lord of any holding to which Chapter III applies, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of michavaram, tax or other dues in respect of that holding.

(2) The application shall be in such form and shall contain such particulars as may be prescribed by the Diwan and shall be signed and verified by the land-lord in the manner prescribed by the Code of Civil Procedure, for the signing and verification of plaints.

(3) The applicant shall from time to time pay to the Tahsildar such fees as may be prescribed by the Diwan for the several processes that may be necessary for realising the arrears. The applicant shall be entitled to a refund of any portion of such fees that may remain unexpended at the termination of the proceedings.

(4) If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the tenant, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and interest and the fees paid under sub-section (3) by the applicant as if they were an arrear of land revenue due to Government and the provisions of the Revenue Recovery Act, IV of 1083, shall, *Mutatis Mutandis*, apply to all the proceedings.

(5) (a) The amount that is recovered shall be paid by the Tahsildar to the applicant on taking a receipt from him in a form as near as may be to that contemplated by section 39.

(b) A copy of the receipt with the attestation of the Tahsildar shall be given free of cost to the tenant if he applies for it."

Now, that is a provision intended to confer upon jenmis the facilities for collecting arrears due to them without resort to courts. As I have already stated in connection with the three-years arrears matter, I certainly think that it cannot be considered to be an unqualified evil for the tenant, probably it may be his salvation. Supposing there is no Revenue Recovery Act existing in regard to land revenue, I am sure that those who are now readily paying the taxes would not do so.

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Mr. V. K. Krishnankutty *(Anthikad).*—But then there is a difference between security of tenure in the case of these properties and Government properties.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—At any rate they have got a good security of tenure. At least this teaches him the habits of thrift. He cultivates the land, he collects the produce and he should pay the little amount out of it that may be due to the jenmi. Is it not good that he pays the jenmi then and there instead of allowing the arrears to accumulate and finally to see his holdings sold? It is to give the jenmis some facilities for ready collection of the michavaram and other amounts that may be due to them. The Government are also considering this aspect of the matter. These are the more important amendments. And now, with your leave, I shall move them one after another.

Mr. President.—The first two amendments tabled in the Agenda are consequential upon the changes to the Civil Procedure Code and therefore they are formal, so that we can take them last.

Mr. Thomas Manjuran *(Government Advocate and Law Officer.*—Sir, I rise to move the following amendment:—

"Introduce the following section after section 22 of the Bill and re-number the rest:— 23. The provisions contained in sections 24 to 36 both inclusive of this Act shall apply only to Kanam tenants who by themselves or through their predecessors in interest have uninterruptedly held the holding under kanam tenures created on or before the 8th Day of Thulam 1090.

Explanation I. The omission, addition or substitution of an item of land from, to or in a holding shall not be taken to have interrupted the continuity of the holding. The substituted item shall be considered to have been in the original demise in place of the item for which it was substituted.

Explanation II. Where a holding is by partition, assignment or otherwise severed, the severance shall not be taken to have interrupted the continuity of the holding and each of the severed portions shall be recognised as a distinct holding unless such recognition would materially affect the rights of the landlord".

I have already explained the general object of this amendment. I am sure Hon'ble Members will agree with me that this is a fair amendment. It cannot do the least harm to the tenant. Kanam tenures that came into existence after 1090 are

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only very rare. If anything should have come into existence after that time they have been accepted by the tenant after giving full notice of the enactment of 1090. The explanations also, I may state, are of considerable value to the tenants because it very often happens that these lands are sub-divided and that holdings under individual kanams are over and over again sub-divided. Unless such sub-divisions are also provided the Jenmies may very well say that they are not prepared to take renewals or recognise the conventions of the holding that have been sub-divided. The lawyer members of the House will agree with me when they remember the provisions contained in the Transfer of Property Act that the mortgagee need not recognise any sub-division in the mortgagee's estate. It is to get over the provisions contained in the Transfer of Property Act that this provision has been incorporated. I request the House to accept this amendment.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second it.

Mr. A. V. Moothedan *(Chalakkudi).*—Sir, I support this amendment and it is on the ground that half a loaf is better than no loaf. Kanam tenures created after the year 1090 are very few and very rare. That is my information also. Therefore there is no necessity in opposing this amendment but at the same time I wish to emphasize that we are entitled to get all kanam tenures to be made irredeemable.

Mr. P. Kumaran Ezhuthassan *(Wadakkancherri)*—Mr. President, I must first congratulate the Government for having come to the rescue of the tenants though after a lapse of 5 years after the passing of this Bill by the Legislative Council. But the grace of that attitude, I am constrained to remark, is very much belittled by the fact that almost everything that was granted to the benefit of the tenant by the amending Act that was passed by this House is attempted to be taken away by the various amendments proposed to be moved by the Government.

Of the nine amendments that are tabled here, 5 are innocent ones—amendments arising either consequential to the amendments proposed to get passed or to the new enactments come into force subsequent to the passing of this amending Act 5 years ago. There are only four material amendments to be considered by this House. The one that is just moved by the Government is the first of its kind. It is very strange, Sir, to find that in this matter the Government gets the first support

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from a gentleman who insists upon saying that it is the right of the tenant to have the kanam secured to him without eviction even though it be of a few months' duration or for the matter of that of a few hours duration. He was saying, Sir, that he supported the amendment for the simple reason that half a loaf is better than none. It has been stated, Sir, by the Hon'ble Government Advocate in moving this amendment that the Government knows for a fact that the kind of kanams that are attempted to be excluded from the purview of this Act are only very limited in number, and therefore it is immaterial as far as the tenant is concerned if this amendment is accepted and passed. I ask the Government why then have this amendment at all? It is only an infinitesimally small number of tenures that have come into existence subsequent to 1090 that are attempted to be saved by this amendment. Why not, I ask, Sir, in the interests of the tenants include them also in the purview of the Tenancy Act and not press the amendment. The Government Advocate's observations in this behalf are really in support of the position that I have taken.

Then again, Sir, I cannot understand why the period of 30 years was fixed in the original Bill itself.

The scheme of the Act will show that it is a particular class of tenants who go by the name of Kanam tenants that are attempted to be saved from the clutches of the Jenmies by the original Act II of 1090. I fail to see even in that Act why a particular period was fixed for getting the benefit of the Tenancy Act viz., that it should be 30 years old on the passing of the Act I really fail to see the reason of it. It has been stated, Mr. President, by the Government Advocate, regarding the other amendments that they exist in the Malabar Tenancy Act and in the Travancore Regulation and hence we will have them here also. I ask the question whether there is a similar provision like this in the Malabar Act or in the Travancore Regulation. The Travancore Jenmi Kudiyan Regulation enacts that there is absolutely no restriction regarding the age of the Kanom tenure. That section goes to lay down that no Kudiyan shall be evicted except under certain conditions. They are the identical words in the British Indian Act also. In the Tenancy Regulation of Travancore or in the British Indian Act no age limit has been fixed. The wording of these two Acts is that no tenant will be evicted unless it be for such and such reasons. Only under those clauses which give a right of eviction to the Jenmi can a Kudiyan be evicted from his holding. Then I ask why you want to stand on an unenviable

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position in Cochin and say that we differ from similar tenures in Travancore and British India in this respect and that the benefit of the Act will go only to a particular class of tenants although the other classes are seen to be very small in number. On that ground also the amendment cannot stand. Another argument of the Government Advocate was that those Kanam tenures which have come into existence after the passing of this Act are tenures taken by the tenants with open eyes and therefore they stand on a different footing altogether. Let us look at the other case of tenants of Verumpattom holdings who under pressure of circumstances beyond their control took out the lands for cultivation on a stipulation to pay a fixed rate of pattom at fixed intervals. The trend of opinion amongst the educated and cultured citizens in British India and in Travancore as also here is that even such tenures should be given a fixity of tenure and they should not be disturbed from their possessions so long as they are able to pay the fixed pattoms and if necessary to give security for due payment of pattom. Enactments to that effect have been passed in British India and Travancore and there is a humble attempt made in this State also to have the benefit of such a legislation for the Cochin agriculturists also. Though the position is seen to be one of opposition from the Government as also from another section of the House yet there is an attempt to get at that in Cochin also and bring Cochin on a par with British India and Travancore. When that is the opinion even with regard to Verumpattom holdings I fail to see why the Government wants to give an age limit to Kanom tenures and make these kanoms that have come into existence subsequent to 1090 evictable. I do concede that such kanoms are taken with open eyes. But I maintain, Sir, that that fact is not to materially affect the nature of the holding. Another circumstance I wish to point out to this Hon'ble House is this. It is a Government Bill that was referred to the Select Committee. It was presided over by no less a person that an ex-Chief Justice of Cochin, Rao Bahadur P. I. Varghese. On that Committee there were also two Jenmi Members, one the Jenmi sitting representative of this Council Mr. Chelur Ittiravi Nambudiri and another Member who was specially nominated as an expert to represent the case for the Jenmis Mr. Kannambra Kunjunny Nair an advocate of very long standing and a very big Jenmi himself. It is also seen that although at the Committee stage as will be seen from certain passages of the report of the Select Committee there was an attempt at compromise, salutary compromise, between jenmies and tenants. It is stated by the then representative of

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the Kudiyans Mr. Puthezhath Raman Menon in his dissenting minute that he did not originally write a dissenting minute, for the simple reason that the Chairman was always trying to have a compromise between the representatives of the jenmies and the tenants sitting on the Committee and it was agreed that the report will be a unanimous one. Mr. Raman Menon as expert Kudiyan Member says that since he understands that the expert for the Jenmies is writing a dissenting minute, he was constrained to write one. That dissenting minute is published along with the report. Even in the dissenting minute of Mr. Kunjunny Nayar you do not see a clause in the dissenting minute to the effect that these class of persons now attempted to be excluded may be excluded. They are seen to have been minding more important things. You will find, Sir, from the dissenting minute that neither Mr. Nambudiri nor Mr. Nayar have adverted to this fact. I fail to see what it is that induces the Government now to introduce this new case of exemption except it be to satisfy the unreasonable and selfish demands of certain interested or very influential Jenmies. Questions Nos. 1 and 2 put by me and answered by the Government today show that subsequent to the passing of this Bill representations have been made by 29 persons under two memorials, one signed by 27 and another signed by 2. The Government were not pleased to give us the names of the individuals, but still the point that I had in mind was gained when the Hon'ble Secretary to Government said that there were only two memorials one signed by 27 and another by 2. Another question of mine answered today shows that the Government did not move amendments at all when the select committee report was presented to this House and the Bill was considered by this House. I will not be far wrong in thinking that amendments were not then moved by the Government as they felt that the Bill was quite all right as reported by the select committee and that there was nothing to be done to protect the interests of the jenmies.

In view of these things viz., the British Indian and the Travancore enactments not having these clauses restricting an age limit, the jenmi members not writing any dissenting minutes at all to bring about the change now sought to be introduced and the attempt of the select committee being to produce an unanimous report which statement of the kudiyans, expert is not controverted by the Chairman of the select committee-in view of these facts, Sir, and in view of the fact that this was a Government Bill and the Government did not choose to move any amendment at all at the time of the consideration of this

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Bill five years back, I fail to see why the Government have taken this changed attitude at this moment. I therefore appeal to the non-official members of this House to whole heartedly oppose the amendment and thus stand by the kana kudiyan steadfast.

Mr. A. V. Moothedan *(Chalakkudi)*.—I shall be grateful to know how many kanam tenures are there after 1090.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri)*.—I think I will have to claim notice along with the Government.

Mr. A. Narayana Menon *(Vyttila)*.—Sir, I do not think that much heat is required in the discussion of this amendment. When the Act of 1090 was passed some grievance was caused to a set of kanam tenants. Once the Act came into force everybody became aware that old kanams alone were irredeemable. If new kanams were created after that they were taken with the knowledge that the benefit of irredeemability would not go with it. This being the case I do not think that there is anything radically wrong in our passing this amendment. If any kanams were created after the passing of the Tenancy Act of 1090 it was with the knowledge of the law that was passed by the State. My experience at the bar shows that there was practically no kanam at all created after the year 1090. Really the grievance is with regard to the Puthukanams created prior to 1090. By the Act of 1090 some kanam tenants alone got protection. Now we are extending the benefit to all kanams that were in force on that day. That being the case I submit that there is absolutely no substance at all in the opposition that is raised. I do not understand whether it is the view of the Hon'ble Member for Wadakkancherri that any document coming under the name of kanam irrespective of its age should be given the right of irredeemability. Fresh documents executed after 1090 stand on a different footing. They came into being with the full knowledge that they would be redeemed. I submit that this amendment is perfectly in order and I support this amendment.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—In the Malabar Tenancy Act a highly complicated system has been introduced and when we are dealing with Cochin customs and Cochin tenures there is no use invoking analogies. We are introducing provisions more or less resembling the provisions contained in section 20 of the Malabar Tenancy Act. It does not mean that the law obtaining in a neighbouring State cannot be applied here without substantial

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changes. The Kudiyiruppu Bill will tell that. While there is irredeemability with regard to Verumpattam tenants in British Malabar what was the effect of the Bill of the Hon'ble Member? Was there a single man to look to that Bill? That Bill was circulated for public opinion. There was not a single individual to say that mere verumpattam tenants should be placed on the same footing as Verumpattam tenants in Malabar. If such a law were to be introduced none of the tenants in Cochin will get lands for cultivation from the jenmies. Opinions about the Bill were unanimous. That shows the danger of blindly following a system of tenure existing in a neighbouring State. In intr ducing any enactment local conditions and local customs should be taken into consideration. There is no use invoking incomplete anomalies.

Mr. President.—Of the various tenures under the Travancore system of law my impression on reading the Travancore Act is that in Travancore under the Jenmi Kudiyan Regulation of 1071 there must be a continuity of possession for 25 years to give a tenant permanent occupancy right. Section 5 says that "subject to the provisions of this Regulation every Kudiyan shall have a right of permanent occupancy in his holding and shall be exempt from liability to eviction as laid down in section 7. In the absence of an express contract, nothing in this section shall be taken to confer the right of permanent occupacy on the Kudiyan of a non-Malayalee Brahmin jenmi, unless he or his predecessors in interest or both have uninterruptedly held the holding for a period of not less than twenty-five years. The provision of para 2 do not apply to assignees of Malayalee Brahmin Jenmies". If the Hon'ble Members will read the proceedings about the passing of this enactment it seems that the original Proclamation of 1042 appears to have conferred this right on all jenmies. But subsequently it was held that only Brahmin jenmies have got this right. It is clear from that enactment that permanency of occupancy was given to those tenants who have uninterruptedly held the holding for 25 years and not for any less period.

Amendment was put and agreed to.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri)*:—A Poll, Sir.

POLL

Ayes.	Noes.
1. Mrs. Meenakshi N. Menon	1. Mr. K. S. Panickar
2. Mrs. D'Souza Williams.	2. ,, V. K. Krishnankutty
3. Mr. Shabdai S. Koder	3. ,, K. M. Kunhi Moideen

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POLL.

Ayes.	Noes.
4. Mr. E. F. Norman	4. Mr. K. M. Ibrahim
5. ,, C. S. Viswanatha Ayyar	5. ,, P. Kumaran Ezhuthassan
6. ,, C. P. Lonappan	6. ,, C. R. Iyyunni
7. ,, T. C. Iyyukutty	
8. ,, A. Eachara Menon	
9 ,, K. A. Nambudiripad	
10. ,, P. Sankunny Menon	
11. ,, V. K. Kutty	
12. ,, A. V. Moothedan	
13. ,, K. S. Manickam	
14. ,, A. Narayana Menon	
15. ,, M. V. Cherian	
16. ,, P. J. Alexander	
17. ,, Popatlal Goverdhan Lalan	
18. ,, M. A. Sankunny	
19. ,, V. S. Krishnan Vaidyar	
20. ,, A. Sivarama Menon	
21. ,, K. P. Kannan Nayar	
22. ,, K. Achyuta Menon	
23. Dr. D. Raghavendra Rao	
24. Mr. Thomas Manjuran	
25. Rao Sahib I. N. Menon	
26. Mr. T. Narayana Menon	
27. Dr. A. R. Puduval	
28. Mr. A. L. Devassy	
29. ,, P. J. George	
30. Rama Varmha Tampuran	
31. Mr. V. K. Achyuta Menon	
32. ,, K. Narayana Menon	
33. ,, K. Krishna Warriar	
34. ,, V. K. Aravindhaksha Menon.	

Amendment was therefore carried.

The House rose for lunch at 1 p. m. and re-assembled at 2-15 p. m. with the Deputy President (M. R. Ry., A. Sankara Menon Avl. B. A. & B. L.) in the Chair.

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Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, I beg to move the following amendment:—

"Delete the re-numbered section 25 of the Bill and substitute for it the following:—

'25. (1) On the expiry of the demise, the kanam tenant shall be liable to eviction from the whole or a portion of his holding as the case may be for any of the following causes:—

(a) If the holding or a portion thereof is required by the landlord for the bona fide purposes of extending his own residential house or building a new house for his residence:

Provided that, if the landlord fails to extend his residence or build a new house for his residence within a period of three years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

(b) If the holding or a portion thereof is required by the landlord for bona fide agricultural improvement which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking:

Provided that, if the landlord fails to carry out the improvements within six years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure.

(c) If the kanam tenant refuses to pay enhanced michavaram under the provisions of sections 33 and 34.

(d) If the kanam tenant neglects or refuses to pay renewal fees and takes a renewal within one year from the date of expiry of the lease, provided that the neglect or refusal is not due to bona fide difference between the kanam tenant and the landlord as to the terms of the renewal.

When the tenant has incurred forfeiture for nonpayment of renewal fees and the landlord sues to eject the tenant, if, at the first hearing of the suit or within such time as the Court may think fit to fix in the circumstances of the case, the tenant pays into the Court the renewal fees and other dues in arrears together with the interest thereon and the landlord's cost of the suit, the Court shall pass an order relieving the tenant against forfeiture and thereupon the tenant shall hold the land as if the forfeiture had not occurred.

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(e) If the kanam tenant refuses to pay additional kanam subject to a maximum of twelve times the enhanced michavaram for which the landlord is prepared to pay interest at the rates fixed for the old kanam.

Explanation:—'Enhanced michavaram' means the difference between michavaram before renewal and that after renewal.

(f) If the kanam tenant fails to pay michavaram during the currency of the lease for three years consecutively, notwithstanding any express demand in writing made at any time after the first year's arrears shall have accrued.

The written demand or notice mentioned in this clause shall be presented to the Court of the District Munsiff in whose local jurisdiction the holding is situated and it shall be served by such courts on payment by the landlord of the prescribed process fee in the manner provided for the service of summons in the Code of Civil Procedure which fee shall be recoverable from the tenant as any other dues. But no Court fee shall be levied on the application presented to the Court by the landlord requesting the service of such demand or notice.

(g) If the kanam tenant wilfully denies the landlord's title.

Explanation:—A denial of the landlord's title under a bona-fide mistake of fact is not wilful within the meaning of clause (g).

(h) If the kanam tenant intentionally and wilfully commits such acts of waste as are calculated to materially and permanently impair the value and utility of the holding.

A suit for eviction on the ground stated in clause (h) should not be entertained unless the landlord has served a notice on the tenant specifying the particular act of waste complained of, and, when the waste is capable of remedy, requiring the tenant to remedy the same and in any case to pay reasonable compensation for the waste, and the tenant has failed to comply within a reasonable time, with that request.

(2) During the currency of the lease, the kanam tenant shall also be liable to eviction under clauses (g) and (h) in the foregoing sub-section (1) of this section.' ".

I have already explained this amendment and I do not think that I need add much more as the Hon'ble Members are aware that this is substantially a copy of the provisions that

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exist in our present Act II of 1090. Most of these provisions find a place in the Malabar Tenancy Act also. This Council when passing the Bill chose to include only three provisions. But now the Government think that there is no justification for making such a departure from the existing law on the subject. While as the Hon'ble Members are aware very serious inroads have been made in the rights of jenmies this right which is conferred on the jenmies I may say is in practice rather hardly over exercised. I do not know if there was ever any case at all to evict the tenant on these grounds. It might be that there might have been one case. In practice the chances of such a case are very very remote and the reasons mentioned here are obviously fair reasons. I have already explained them in brief and if it is necessary I shall explain them further after hearing the views of the Hon'ble Members on this amendment.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second it.

Mr. K. Ashtamoorthi Nambudiripad *(Landlords).*—Sir, I support this amendment. With your permission Sir, I may be permitted to move an amendment to the amendment just now moved by the Hon'ble the Law Member. The amendment is to the following effect:—

"Add the following as clause (c) after clause (b) and renumber the rest:—

"That the period of kanam has expired and there has been no renewal and the landlord requires the holding bona fide for his own cultivation or that of any member of his family or tarawad or thavazhi, who has a proprietory or beneficial interest therein.

Explanation:—In the case of a landlord .....

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The Hon'ble Member has not given notice of the amendment. These amendments have been published long ago and the Hon'ble Member should have given notice of the same.

Deputy President.—The amendment wants to further cut down the rights of tenants. I am not for allowing the amendment.

Amendment was ruled out of order.

Mr. A. Narayana Menon *(Vyttila).*—I think it will be better if clause by clause is moved; I am going to oppose

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clauses (c) to (f). With regard to clauses (a), (b), (g) and (h), I do not oppose them. Now I shall deal with the objectionable clauses seriatim.

Deputy President.—After discussion I will put clause by clause. But the speeches may be made with regard to all the clauses.

Mr. A. Narayana Menon *(Vyttila).*—Now I am going to oppose clauses (c) to (f) of the amendment. Clause (c) is to the following effect:—"If the kanam tenant refuses to pay enhanced Michavaram under the provisions of sections 33 and 34." Now all these clauses (c to (f) are based more or less on the old feudal conception. We have survived it. When once you get rid of the feudal idea all these amendments would be found unnecessary. For instance, let us take clause (c). Is there not a provision in this Act for compelling the tenant to take out a renewal and to the payment of Michavaram, for both of which the jenmi has been given summary power? Has he not got the statutory charge over the property for all sorts of arrears? Then where is the necessity for this clause? Suppose the tenant is poor. He is not able to pay the michavaram or renewal fee in time. Because he does not pay in time is he to be evicted? I submit, Sir, that since there is sufficient guarantee for the landlord's right in this Bill, it is not at all proper for this House to allow the landlord to evict the tenant for the simple reason that he has not paid the Michavaram or other dues when demanded. The fundamental defect is that you are here trying to resuscitate the old feudal conception which we have buried long ago. In 1090 there was a reason for the retention of these clauses. You were taking away from the jenmi the right of redemption that he had till then. Just to pacify him you had to give him some rights then. It is stated that these are only illusory rights. Then why should these rights be retained in the Bill? The law is not a place where you should put in unnecessary and illusory rights. We want only necessary changes. The necessary changes have already been entered in the Bill which was passed by this Council. These reasons apply with equal force to clause (d). Clause (d) says:—"If the kanam tenant neglects or refuses to pay renewal fees and takes a renewal within one year from the date of the expiry of the lease, he can be evicted provided that the neglect or refusal is not due to bona fide difference between the kanam tenant and the landlord as to the terms of the renewal." This also is unnecessary.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—Is he not moving an amendment?

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Mr. A. Narayana Menon (*Vyttila*).—I am for deleting clauses (c) to (f).

Then as regards clause (c). When once the kanam amount has been fixed the jenmi should not be given the right to ask for any further amount by way of kanam. For this additional reason, this amendment should be taken away.

Then clause (f); it says, "if the kanam tenant fails to pay michavaram during the currency of the lease for three years consecutively, notwithstanding any express demand in writing made at any time after the first year's arrears shall have accrued." I ask have you not got the right to enforce payment through a Court of law? You have got a statutory right over the property for 12 years and for 6 years you have the personal relief also. When that relief is available and when under another section summary power also is given to realise michavaram annually, it is absolutely unnecessary for us to arm the jenmi with further rights and to put the tenants to all sorts of difficulties. I submit, Sir, that except clauses (a), (b), (g) and (h)all the rest should be taken away.

Mr. V. K. Krishnankutty (*Anthikad*).—Sir, the object of the present amendment seems to be to take us to the original position, i. e. where we are, or to take us to the position that the tenant has got by Act II of 1090. The amendment simply takes in section 23 of Act II of 1090 and makes only one change, that is it omits clause (i) which is not necessary. So that the position is not better for the tenant. The object of the Tenancy Act is frustrated by this amendment. We can concede that under certain conditions or for certain reasons the tenant will have to give way to the jenmi and surrender possession of the properties to the jenmi. Now let us consider what are the conditions under which or the reasons for which the tenant should surrender his holding to the jenmi. In the Bill that has been presently remitted for reconsideration to this House three reasons are given. The first is that the tenant has wilfully denied the title of the landlord before the date of such suit. This clause appears to be a very reasonable one because when the tenant has denied the title of the landlord his paramount title is in jeopardy. Their relationship ceases and it is only proper that such a clause should exist. Then the second clause is that the tenant has committed or permitted such acts of waste as are calculated to impair materially and permanently the value or utility of the holding. Under this clause it appears that the tenant has no longer the

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mentality of a tenant to hold and enjoy the property under the demise. He is bent upon ruining the property and to create all sorts of trouble so that there also, so to say, the relationship as between the landlord and the tenant is at an end. Then there is the third clause which says that "the tenant has collusively allowed a stranger to encroach on the holding adversely to the interests of the landlord". There also the attempt of the tenant is to take away all the rights of the landlord and to give it to a third person. At such a stage also the law should interfere. These are the three clauses which exist in the Bill which was passed by this Council after mature consideration. But other conditions are now attempted to be provided by the amendment. Clauses (c), (d) and (e) only contemplate certain conditions where the tenant some how or other fails to pay certain dues to the landlord. It may be due to their inability and not due to mischievous tendencies on the part of the tenant. If the kanam tenant refuses to pay enhanced Michavaram there also the law provides certain clauses under which the landlord could take action and get a remedy in a court of law. Such failure to pay dues should not entail forfeiture to the landlord. The other conditions are (g) and (h). They are the clauses in the Bill. What I oppose is the new amendments, i. e. clauses (c), (d), (e) and (f). In the case of clause (a) there seems to be some justification because at times the land may be required for the landlord for agricultural purposes in order to eke his own livelihood. The three clauses in the Bill that was passed by the Council may be retained. I oppose the amendments as there is no justification for them.

Mr. P. Kumaran Ezhuthassan - (*Wadakkancheri*).— Mr. President, Sir, the amendments sought to be introduced have nothing but the effect of undoing what has been done by this Council five years back to improve the lot of the kanakudiyan. Out of the various clauses under which a kanam tenant may be evicted as proposed in the present amendment only two clauses exist in the amending Act that was passed by this Council. The third one contained in the Bill passed by the Council does not find a place in the amendment just now proposed to be substituted. The third condition mentioned in the Bill that is passed by this Council is this. "That the tenant has collusively allowed a stranger to encroach on the holding adversely to the interests of the landlord". That fortunately or unfortunately is not incorporated in the section that is proposed to be substituted in place of section 24 of the Bill passed by the Council. So what remains out of section 24 that

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was passed by this Council which now becomes 25 are only these two clauses:—

"(1) That the tenant has wilfully denied the title of the landlord before the date of such suit'. (Suits for eviction).

Explanation. A denial of the landlord's title under a bonafide mistake of fact or law is not wilful within the meaning of this clause.

(2) "That the tenant has committed such acts of waste as are calculated to impair materially and permanently the value or utility of the holding:

Provided the landlord has served a notice in writing on the tenant specifying the waste complained of and the tenant has failed to remedy the same within a reasonable time".

These two which were there in the amending Bill that was passed formerly are retained in the amendment that the Government also wants now to be passed and with regard to them I do not think that there will be any difference of opinion between any section of the House, because they are rightly cases where the Jenmi should be given the right of redemption. If the right of eviction is to be granted at all to the jenmi these two clauses can remain. Now, Sir, over and above these two amendments regarding which there is a unanimity of opinion, the proposed amendments take in various other clauses also which are, as stated here by the Hon'ble Member for Anthikad, nothing but a copy of the provisions for eviction contained in our present Act II of 1090. This Act II of 1090 is an enactment that was produced after strenuous labour of a very competent committee which sat for a period of three years. Let me recall the history of Land Legislation in Cochin. Pertaining to land tenures in Cochin we had first the Proclamation of 1080 which gave proprietory rights to Cochin tenants holding Pandaravaka lands on different tenures which helped only one class of land holders in Cochin leaving holders of Puravaka lands still in their miserable plight. To the partial relief of holders of Puravaka lands this great Proclamation of 1080 was followed by the Proclamation of 1087 proposing to give some sort of fixity of tenure or some sort of relief from the encroachments that these jenmies were making upon the tenants of these Puravaka lands. The Committee that considered the jenmi kudiyan question submitted its report on which followed the Tenancy Act of 1090. All the clauses, (a) to (h) of the section relating to eviction in that Act are reproduced here by way of amendments now. Clause (i) of section 23 of that Act alone is omitted. Now with regard to the clauses to which I take objection I will just make one or

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two observations with regard to each of them. The first of these is clause (c) which is to this effect:— " If the kanam tenant refuses to pay enhanced michavaram under the provisions of sections 33 and 34 ". There are, I submit, Sir, provisions in this Act for compulsory renewal to be forced upon the tenant and for compulsory renewal to be taken out from the Jenmi. There is provision in the Bill already passed to this effect. In such suits the Court can go into the question of increasing or decreasing the michavaram. With the existence of these provisions which can be enforced on the tenant there is no necessity at all to have a special clause for redemption of the kanam holding because the kanam tenant who does not pay enhanced Michavaram can be made to pay by a suit. Vide sections 26—30. I do not think that this aspect of the case was looked into by the authorities responsible for the present amendment. In the notes that are appended to the draft Act which after going through the Select Committee stage was passed by the Council we find remarks made by some prominent members of the bar on the various clauses allowing redemption under Act II of 1090. No less a person than the ex-Government Advocate, our honoured Deputy President, is seen to have made pertinent observations regarding these clauses in his notes that are appended to the draft Act that was placed in our hands in 1106. He points out there the unworkability of the old clauses regarding eviction for non-payment of enhanced michavaram. With his vast experience as an able advocate he gives reasons to say why it is unworkable. I will only invite the attention of this House to annexure III to the Draft Bill. The Committee, after going through these notes and after going through the various other representations that were made, opined that that clause is not to be retained in the amending Act. One of the important changes made by the Committee is the restriction of the grounds on which suits to evict a kanam tenant may be brought. Another is the introduction of a specific provision for a suit for renewal and for fixing the terms there of including enhancement of michavaram. Even the Jenmi representatives do not seem to have made the subject matter of this clause (c) a point of their dissenting minute. The dissenting minute written by the Jenmi members the then sitting member as also the Jenmi expert do not touch this point while they advert to one or more additional clauses for redemption.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The word used is 'refusal' and not 'non-payment'.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—I do not, Sir, know how a difference is created by that word. There

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is a difference in meaning between the two words I admit, but I do not know how it can affect the issue before the House for the simple reason whether the tenant refuses or fails to pay there is the remedy in a court of law where he may be made to pay. I submit therefore, Sir, that the use of the word 'refusal' makes no difference so far as untenability of the retention of that clause is concerned.

Now with regard to clause (d) that also for similar reasons as for omitting clause (c) viz., there is provision for suing and there is provision for the decree being granted and there is provision for the decree being executed, under the sections quoted by me, there is no necessity for making that clause one of the grounds for evicting the kanam tenant. Clause (e) likewise is also covered by the compulsory renewal sections of the Act where all these things can be worked out. The sections are very clear. Clause (f) will be connected with another amendment that the Government will be moving, i. e. with regard to the provision for the recovery of jenmies, dues through the machinery of the Land Revenue Department. If that is unfortunately going to be passed by this House there is no nccessity for the retention of clause (f) because there will never arise an occasion where the tenant has left three years' arrears as the provisions of the Revenue Recovery Act will be taken to the doors of the tenants. If this House is inclined to fight out that amendment and if it is lost as I wish it will, then the amendment covered by this clause stand independently. Even on its own intrinsic merits clause (f) cannot stand for the simple reasons that there are provisions in the Acts which give the Jenmi the right to collect each year's michavaram when it is below Rs. 200 in the nearest Munsiff's court and that without payment of court fees. As regards clauses (a) and (b) the first relating to cases of evictability when the holding is required by the landlord to construct a residential building for him and the latter when the land has to be improved and the tenant is not prepared to make the outlay necessary for such improvements, they are, I submit, Sir, clauses the use of which is sure to be abused to the great detriment of the tenant.

Therefore we come to this that the clauses in the proposed amendment that can stand are only (g) and (h). These are clauses 1 and 2 of section 24 of the Bill. Those are the only cases where the Jenmi ought to be given power to proceed against the tenants that misbehave and thereby merit forfeiture of the holdings. Such tenants as are mentioned in these clauses alone should be made answerable for his faults and no body

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else. When you also take into consideration the fact that our neighbouring State of Travancore whose Jenmi Kudiyan Regulation when I said here as placing no restriction of years for irredeemability it was stated here that there are conditions attached to section 5 of the Travancore Regulation and passages were read out from the Regulation V of 1071, you may be pleased to understand, Sir, that, that Regulation V of 1071 has been repealed and that the repealing Regulation makes the Kudiyan the owner of the land.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—What is the wrong statement made? What has the officers failed to do?

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—For the information of the Law Member I may tell him that a book was placed before the Hon'ble President from which a passage was read out contradicting the statement that I made here regarding that the Travancore Regulation does not lay down any age limit for irredeemability of kanam tenures. It was pointed out by the Hon'ble President that there is an age limit of 25 years with regard to certain lands. I only wanted to say that.that Regulation has been amended by Regulation XII of 1108 and further amended by Regulation VII of 1110 and that the latest amendment has instead of giving of fixity of tenure gives even ownership in the holdings to the kudiyans so long as they pay the jenmikaram.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Is it an argument or is it simply to correct a mistake?

Mr. K. Ayyappan *(Ezhuvas South).*—May I know the latest Travancore law on the subject either from the Government or the Hon'ble Member Mr. P. Kumaran Ezhuthassan?

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—I submit Sir, that this is only an argument. I was citing that in Travancore by the amending Regulation of 1108 proprietory rights were granted leaving not even a semblance of redeeamability. Section 5 of the amending Regulation is to the following effect:—"From and after the commencement of the amending Regulation the jenmies shall not have any right, claim or interest in any land or holding except the right to receive jenmikaram . . . . .".

My humble submission, Sir, is that the conditions under which a tenant is liable to eviction must be minimised as far as possible as has been done by this House by enacting section 24 in

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the manner that they have done. This is the prayer I have to make to the non-officials and I implore them to see that this multiplying of the rights of redemption of the property from the tenant so long as he is willing to pay the michavaram, etc.—and there are processes provided for the speedy and very cheap realisation of the same—need not be granted to the jenmies and let no non-official be guilty of helping the jenmi to oppress the tenant.

മസ്റ്റർ സി. ആർ. ഇയ്യുണ്ണി (*Trichur South*).— ഒരു സംഗതി മാത്രമേ എനിക്കു പറയുവാനുള്ളൂ. അതായതു് മിച്ചവാരത്തിന്റെ ഫ്രീ ഇരട്ടിവരെ കാണസംഖ്യ കൊടുക്കണമെന്നുള്ളതിനെ സംബന്ധിച്ചാണു്. മിച്ചവാരത്തിന്റെ ഫ്രീ ഇരട്ടിവരെ കാണസംഖ്യകൊടുക്കണമെന്നാവശ്യപ്പെടുന്നതിന്റെ കാരണമെന്താണെന്നു് എനിക്കു മനസ്സിലാകുന്നില്ല. ഒരുപക്ഷേ ചില സംഗതികളിൽ കാണസംഖ്യ വളരെ കുറവായി എന്നുവന്നേക്കാം. അങ്ങനെ കാണസംഖ്യ വളരെ കുറയുമ്പോൾ പൊളിച്ചെഴുത്തവകാശത്തിനുള്ള സംഖ്യയും വളരെ കുറയും. പൊളിച്ചെഴുത്തവകാശം കുറയുന്നതു് ജന്മികൾക്കു വളരെ ദോഷമാണു് എന്നാൽ കാണസംഖ്യ മിച്ചവാരത്തിന്റെ ഫ്രീ ഇരട്ടിയോ ഫ്രീ ഇരട്ടിയോ ആയാലും അതിൽ കൂട്ടുതലായ ഒരു സംഖ്യ കൂടിയാണു കൊടുക്കുന്നതിനുള്ള യാതൊന്നും ഇതിൽ കാണുന്നില്ല. ജന്മിക്കു് ഒരു തരത്തിലുള്ള ആനുകൂല്യം ചെയ്യുമ്പോൾ കുടിയാനും മറ്റൊരുതരത്തിൽ ചില ആനുകൂല്യങ്ങൾ ചെയ്തുകൊടുക്കേണ്ടതാണു്. അല്ലാതെ മിച്ചവാരത്തിന്റെ ഫ്രീ ഇരട്ടി കാണസംഖ്യ ജന്മിക്കു കൊടുക്കണമെന്നു പറയുന്നതു ശരിയല്ല. മിച്ചവാരത്തിന്റെ ഫ്രീ ഇരട്ടിയിൽ കൂട്ടുതലായി കാണസംഖ്യ കൊടുക്കുന്നുണ്ടെങ്കിൽ അതു മടക്കികൊടുക്കുകയും, അതനുസരിച്ചു് പൊളിച്ചെഴുത്തവകാശത്തിന്റെ സംഖ്യ കുറക്കുകയും ചെയ്യേണ്ടതാണു്.

Mr. M. V. Cherian (*Mattancheri South*).—Sir, clause (c) of the amendment is to the following effect:—"If the kanam tenant refuses to pay enhanced Michavaram under the provisions of sections 33 and 34". The authority which is to decide whether the jenmi is entitled to enhanced michavaram is the Court. Therefore the jenmi at the end of twelve years will have an inclination to advance some grounds to claim enhanced michavaram. Along with that he will sue for eviction also. The jenmi is entitled to make a test suit for enhanced michavaram under this clause. Therefore by the scheme of this amendment it will be seen that the jenmies are always given a persuasion to go to court to institute test suits to get enhanced michavaram. If he gets enhanced michavaram, surely the tenant has refused to pay and therefore he is evictable. Therefore my whole contention is that if clause (c) is retained the

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jenmi will once at the end of twelve years is sure to come to the court with a claim. There will be a refusal because the tenant will try to hold that there is no necessity for enhanced michavaram and if his contention is not finally upheld eviction will also be ordered. Therefore my contention is that clause (c) is most pernicious. Every twelve years we can expect a suit in court. As the Hon'ble Member for Trichur remarked, it is inequitable there is no provision for reduction of pattom in cases where there are grounds entitling the tenant for reduction of pattom in section 33. Suppose the jenmi unreasonably does not agree for reduction of pattom, what is the penalty? Will he get the jenmom right of the property? Surely not.

(At this stage the Hon'ble the President occupied the Chair)

Sir, my submission is that clause (c) of the amendment is a very pernicious one. Section 33 is very vague. The jenmi in certain conditions can claim enhanced michavaram; for instance, if the capacity of the land is increased the tenant has to pay more. They are very vague and the jenmi by this clause will be given an incentive after 12 years to go to Court to see whether he is entitled to have enhanced michavaram and with that he will have an additional prayer for eviction because the enhanced michavaram has been refused. Therefore if this clause is inserted my submission is that the fixity of the tenure will be disturbed and the jenmi will drag the tenant to a court of law at the end of every 12 years. This amendment is one sided and it will lead to all sorts of unhealthy relations between the landlord and the tenant every 12 years. Then under clause (d) also the jenmi is likely to go to Court. That also pre-supposes that a suit is unavoidable. Then as regards clause (e) my submission is that it will be due only to the labour of the tenant and not of the jenmi, that the land has improved and the improvement has become of a permanent nature. The Jenmi cannot have the fruits of the tenant's labour. Therefore clause (e) entitling the landlord to claim additional kanom amount also is most pernicious. Then as regards clause (f) it is unnecessary since there is summary procedure prescribed in this Act itself. Therefore my submission is clauses (c), (d), (e) and (f) should be deleted.

Mr. A. Sankara Menon *(Trippunithura)*.—Sir, with regard to clauses (c), (d) and (e) the landlord is otherwise protected because he can bring a suit for the execution of renewal deed when all these questions will be gone into. Then with regard to clause (e), provision ought to be made somewhere else

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to enable the landlord to claim the additional kanam. When there is such a provision the landlord may be enabled to recover the same by selling the kanam right. There is no necessity for introducing any of the penal provisions in clauses (c) to (f). I am decidedly for omitting all these clauses.

* **Mr. A. Sivarama Menon** *(Mulakunnathukavu).*—Sir, this amendment refers to a very vital part of Tenancy Legislation, viz., the right given to the jenmies in evicting tenants who are given the permanent right of occupancy. There is absolute agreement, Sir, with regard to the important conditions on which these rights may be reserved for the jenmi, viz., if anything is sought to be done by the tenant which will interfere with the absolute right of the jenmi. There is also that readiness to the recognition of the superior right of the jenmi. On the three clauses mentioned in the Bill there is unanimity of opinion. But with regard to the other clauses there is considerable difference of opinion. When this Bill was considered and discussed in this House there was wide differences of opinion with regard to the conditions that should be imposed and incorporated in this section and the right given to the tenants with one hand was taken away with the other.

I am not now, Sir, for going into the details with regard to the absolute necessity of retaining every clause of the amendment proposed here. My position is roughly that some of these clauses at any rate should not be insisted upon and I include in this category one which has not been so far brought to the notice of the House and that is clause (b) of the proposed amendment, and the other clauses mentioned by the Hon'ble the Deputy President.

I shall deal with clause (b) which has not been so far referred to by any member. Clause (b) is to the following effect:—"If the holding or a portion thereof is required by the landlord for bonafide agricultural improvements which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking: Provided that, if the landlord fails to carry out the improvements within six years from the date of eviction, the previous tenant shall be given the option to hold the same on the original tenure". My first objection, Sir, to the retention of this clause is that in the matter of improvement we are always familiar of the tenant ruining the jenmi and legislation was first contemplated under the Tenancy Act either here or elsewhere with a view to give greater rights to the tenant who has claimed compensation for improvements effected.

* Speech not corrected by the Hon'ble Member.

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That being the position it is the primary duty of the tenant to make improvements. This clause seeks to introduce a novel innovation to the effecting of improvements on property. My question is whether that right or duty of effecting improvements on land ought to be considered the duty of one who is in daily touch with the land or one who on account of the superior or absolute right must be entrusted with this difficult and expensive task of spending money and then making the land more valuable than what it was before. My submission is that especially now when there is every facility afforded to improve agriculture in our State when we have organisations and legislations already passed to help any one with financial assistance who is inclined to improve the land, that there is no need to make this a condition for eviction of the tenant. Ample scope and facilities have been provided by our Government by passing enactments just as the Land Mortgage Bank and similar measures to enable the agriculturists to improve the land. My submission therefore is that so long as they pay their dues even at the end of twelve years their position need not be disturbed. In the matter of improving the land it is my considered opinion that the tenant has got as much facility as a jenmi has got. As a matter of fact I know and several of the Hon'ble members of this House will surely endorse my statement that jenmies are hard hit in these days of depression as anybody else and it is wrong to suppose that the jenmi has got ample resources to improve the land, resources which are not supposed to be possessed by the tenant. The real truth seems to be that both the jenmi and the tenant are on a par in the matter of resources for improving the land, at the present day at any rate, and that therefore it need not be made a cause for giving the right of evicting out of the ordinary way to the jenmi and thereby create another cause of heartburning for the tenants.

With regard to other clauses especially (e) which refers to a kanom tenant refusing to pay additional kanom, that again, I submit, is really an unnecessary clause to this section. As far as I know, the Hon'ble the Law Member will correct me if I am wrong, that is not a clause which finds a place either in the Madras enactment or any other tenancy legislation. But it may be said that we need not be tied hand and foot by what obtains elsewhere. I entirely agree. But surely when the whole purport of legislation is to make the old law less applicable and to give certain real rights to tenants I submit that it should be our care to see that such rights are preserved with very great care. I

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will not be suggesting that the jenmies as a class are unreasonable. I am not suggesting that they will take the opportunity of evicting tenant after tenant because this was introduced. Although the Hon'ble the Law Member was emphasising the fact that even if we pass this amendment enbloc there is really no danger of any tenant being evicted without any cause. I am not prepared to say he is wrong. I am not at the same time prepared to say that on that ground that there is no such danger. I fail to see why so much stress is made for the retention of this clause. I fail to see the necessity of such a clause. Without going into the merits in detail, I appeal to the Government and to the Law Member to agree to the delition of these clauses, (b) and (e) particularly, even though I am entirely at one with regard to the suggestion made by the Deputy President that the other clauses need not find a place there. But strictly speaking, Sir, my whole position is that whatever may be the case I do think that the retention of this clause (b) is unnecessary and unjust.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Sir, objection is taken by Hon'ble Members mainly to clauses (b), (c) and (e) although some Hon'ble Members want to delete clauses (d) and (f) as well. The Hon'ble member who objected to clause (b) is the Hon'ble Member who sat down just now. I agree that a provision corresponding to that does not find a place in the Malabar Tenancy Act but I must say at the same time that a corresponding provision has been in existence in Cochin from 1090 onwards. That provision appears to have been introduced as a result of very detailed investigation as stated by the Hon'ble Member for Wadakkancheri. Several learned and experienced men who investigated the matter thought that the introduction of such a provision was only fair and that it would not create serious difficulties.

Now it has to be remembered that there are some practical considerations which should be gone into. 'If the holding or a portion thereof is required by the landlord for the bona fide agricultural improvement which requires capital outlay and which the tenant is not willing to undertake or is not capable of undertaking' The Hon'ble Member who spoke on that amendment said that it was not necessary. The argument advanced by him was that in these days when the Government contemplate to help the agriculturists with a view to improve cultivation why should the jenmi be given the chance, why should not the tenant improve the land? When the tenant improves the land the question drops altogether. In cases where the tenant can do and is willing to do it by all means let him do it.

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Mr. K. Ayyappan *(Ezhuvas South).*—Suppose the jenmi does not improve the lands, cannot the jenmi be evicted?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Yes, there are provisions in the same sub-clause: 'Provided that, if the landlord fails to carry out the improvements within six years from the date of eviction the previous tenant shall be given the option to hold the same on the original tenure'.

Mr. T. S. Balarama Ayyar *(Trichur North).*—Who is the judge to decide the question, the jenmi or the tenant?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Naturally the final arbiter is the court.

Mr. T. S. Balarama Ayyar *(Trichur North).*—We want to avoid litigation as much as possible.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—In the end our only source of hope and confidence is the Court. There is provision already there.

One Hon'ble member said that the period of six years was too long a period. He asked whether a lesser period may not be enough. Agricultural improvement means it takes time; you cannot do it all at once.

I have said already that that provision has existed all along and it was introduced as a result of ripe experience. It is not a case of a new provision being introduced.

Mr. President.—Has there been any case of this sort here?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—No, Sir. I have never heard of a case where a landlord has evicted the tenant for carrying out agricultural improvements.

But what I say is when you legislate you legislate fairly and equitably.

Mr. President.—So there was no undue hardship caused by that provision. Therefore there is no necessity to delete that provision.

Mr. K. Ayyappan *(Ezhuvas South).*—That also shows there is no necessity for such a provision.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—That is too wide an argument. There are certain

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clauses in several enactments which may seem of no use but the moment you take that away you find a serious result. When the Government found that this provision has never given rise to any hardship Government thought it would be rather hard especially seeing that this House was poorly represented by the Nambudiries, the landlords of the State, to stand by and see what after all is a necessary provision being deleted. Hon'ble Members will realise in this connection that here we are dealing with a bill passed by this House conferring most favourable rights on the tenants. I am sure apparently every member here, all the non-official members, probably 95 per cent, are of the tenants, way of thinking. So let us be fair to the jenmies also. It never does harm to the tenants. If there is anything really harmful to the tenants point out what that is. If you put up a fight upon a clause like that it will make matters very difficult for the Government. You must consider these amendments in a generous spirit. We are considering amendments almost entirely in favour of the tenants to fight which there is absolutely none here.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—There were two on the Select Committee.

Mr. T. S. Balarama Ayyar *(Trichur North).*—Has this provision (b) ever been in the Statute Book of British India?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—So far as I know, it was not. The British Indian custom is very different. I gave this morning one example of vital difference between Malabar and Cochin. In Malabar there was unanimity of opinion for conferring non—evictability on Verumpattom tenants but in Cochin it is just the opposite. The tenant here also realises that if he drives the jenmi too far he might not get land to cultivate. You cannot merely on account of contiguity of Cochin, British Malabar and Travancore imagine that the long standing customs of one State will be same in the neighbouring States. There are several points of difference. The fact that the enactment of 1090 conferred these radical rights, far reaching and most important rights, on the tenants have been considered to be their Magna Charta in the State. When this was introduced this clause and other clauses which are now being considered were considered in detail. It is not a case where the Government want to spring a case upon anybody. If only as a gesture of fairness to the absentee jenmi—we have only one solitary member to represent the jenmies—let us allow these

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amendments to go through and expedite the bringing into force of this measure which the Hon'ble Member like the Government desires.

Let me come to clause (c) now which reads thus: 'If the kanom tenant refuses to pay enhanced michavarom under the provisions of sections 33 and 34;' The Hon'ble Member for Wadakkancheri was referring to the meaning of the words 'neglects' and 'refuses'. That significant word 'neglects' occurs in clause (d) but does not occur in clause (c). There is nothing to prevent the tenant to say that he refuses to pay.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Cannot the decree be executed?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—In section 28 of the Bill the renewal deed will be handed over by the Court to the party. But suppose the tenant says that he is not willing to accept the tenure on these terms. Then what is to be done? I should say that that tenant should not have the privilege of keeping the tenure any more.

'Refuses' is distinct from 'neglects'. Refusing is a deliberate act.

Mr. M. V. Cherian *(Mattancheri South).*—Renewal was ordered by a decree. If the tenant again refuses to the renewal even after the decree what is to be done? Will you add that?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—Refuses after a decree. That suggestion has never before been put forward. That may be considered.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—What is your argument? Is it refusal after decree?

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It must necessarily be after decree.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Refusing can arise only when the party refuses. Then in that case there is no necessity for amendments like (d), and (e).

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—The Hon'ble Members if they carefully consider those amendments' will not worry over those clauses. Clause (d) says: 'If the Kanom tenant neglects or refuses to pay renewal fees and takes a renewal within one year from the date of expiry of the lease provided that the neglect or refusal is not due to bona fide difference between the kanom tenant

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and the landlord as to the terms of the renewal". That is the condition. But what is the safeguard? "When the tenant has incurred forfeiture for nonpayment of renewal fees and the landlord sues to eject the tenant, if, at the first hearing of the suit or within such time as the court may think fit to fix in the circumstances of the case, the tenant pays into the court the renewal fees and other dues in arrears together with the interest thereon and the landlord's cost of the suit, the court shall pass an order relieving the tenant against forfeiture". That I submit only lays down that bona fide tenants should not consistently refuse their dues. This clause simply says that the tenant should pay the dues to the jenmi and if the jenmi sues he will have to pay the money with costs. What about the Jenmi? Should we wipe off his rights? Government are not prepared to launch into a legislation which is clearly of an exproprietory nature.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—But sections 28 and 29 provide for all these things.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—That is true. But the Hon'ble Member for Wadakancheri may ask why these provisions are necessary. Probably he views them from the tenants' standpoint. But what I say is that the jenmi must have ready methods of collecting his dues. The tenant will have to pay his little dues anyway. How long can a tenant go on putting his dues in arrears? A day will come when the jenmi will evict him. For instance take the case of Paliyam. I know—I myself am a tenant of the Paliyam—formerly arrears upon arrears accumulated. Then the Paliyam began to sue. In several cases the tenants were evicted. Now tenants pay the dues and there ends the matter. So what I say is that we should consider the case of the jenmies also. That is one safeguard.

Now we come to clause (e). 'If the kanom tenant refuses to pay additional kanom subject to a maximum of 12 times the enhanced michavarom for which the landlord is prepared to pay interest at the rates fixed for the old kanom. Explanation. Enhanced michavarom means the difference between michavarom before renewal and that after renewal'. Now that is a contingency, and a very remote one also, which I believe has never arisen in this State and which I believe will never arise. The coming into operation of that amendment depends first upon the enhanced michavarom. I do not think any court of law in Cochin has to-day enhanced michavarom. In view of the various safeguards contained in the Act it is next to impossible to enhance michavarom.

Mr. M. V. Cherian *(Mattancheri South).*—They have enhanced in a good number of cases.

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Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—Can you cite?

Mr. M. V. Cherian (*Mattancheri South*).—There are two or three cases.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—If perchance in an extraordinary case michavarom has to be enhanced, why not pay? For the additional kanom amount the tenant is entitled to interest. The kanom amount will be 500 puthens if the real worth of the property is Rs. 2,000. Generally it is 20 puthens on a property worth Rs. 100.

Mr. C. R. Iyyunni (*Trichur South*).—Suppose the michavarom is reduced, then what about the kanom amount?

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—He should have introduced that amendment before. But now that amendment is not before the House.

Mr. C. R. Iyyunni (*Trichur South*).—Your fairness to the jenmi should also be shown to the tenant.

Mr. Thomas Manjuran (*Government Advocate and Law Officer*).—Let us pass on to the next amendment. Clause (f): 'If the kanom tenant fails to pay michavarom during the currency of the lease for three years consecutively, notwithstanding any express demand in writing made at any time after the first year's arrears shall have accrued.' To this an objection was raised that since power is to be given to collect michavarom through the Revenue department, why should we have such measures? There are several cases where the jenmi may not go to the Revenue Department at all. Even there there is a safeguard. Notice has to be sent through the court, and even after the notice if the arrears are left unpaid, he deserves to be sued upon.

Then as regards the other amendments, to make the long story short, it comes to this. Hon'ble Members of the tenants' persuasion think that they would rather like to escape these amendments also. But they must consider not only from their view point but also a little from the jenmies' view point. Although we have only one jenmi representative we must also remember that all these relations, whether between persons or between individuals more or less of a public nature, these relations unless they are grounded upon fair play and honest methods they won't subsist. Complications may arise. To satisfy the jenmi and to satisfy the tenant is what we require. If the tenants clamour that they are oppressed by the jenmi

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and so they want to oppress the jenmi, the jenmi may find methods of oppressing the tenants. These provisions if introduced will produce no real trouble and the Government have been anxious only to see that a certain amount of fairplay is given to the jenmi. In these circumstances I would exhort the Hon'ble Members not to take advantage of the great numbers who hold the tenants views here but support my amendments.

With regard to the point raised by the Hon'ble member for Wadakkancheri with regard to Travancore Law although that matter is not relevant here since he has referred to it I shall refer the member to the provisions contained in section 42 of the Act as amended by the Act of 1108.

Mr. K. Ayyappan *(Ezhuvas South).*—Are there later amendments?

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*—I am not aware.

Section 42 says 'Notwithstanding anything contained in the foregoing the provisions of this Act shall not apply to any kanapattom executed since the 25th day of Karkadagom 1042 which expressly provide for redemption.' Therefore that takes us much further than 30 years, ours is 1060. This was repealed by the act of 1108, but this was retained. I refer to these things since the matter was brought to the notice of the House. If the Hon'ble member wants further information I shall be glad to give him all information.

Clause (a) to sub-section (1) of section 25 was put and carried.

Clause (b) was put and negatived.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—A Poll, Sir.

Ayes.	Noes.
Mr. K. P. Kannan Nayar.	Mr. P. J. Alexander.
,, K. Achyuta Menon.	,, K. Ayyappan.
Rama Varmha Tampuran.	,, T. S. Balarama Ayyar.
,, Thomas Manjuran.	,, M. V. Cherian
,, I. N. Menon.	,, George Parakkal.
,, V. K. Aravindaksha Menon.	,, K. M. Ibrahim.
Dr. A. R. Puduval.	,, E. Ikkanda Warriar.
Mr. A. L. Devassy.	,, T. C. Iyyukutty.
,, V. K. Achyuta Menon.	,, C. R. Iyyunni.

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Ayes.	Noes.
Mr. T. Narayana Menon.	Mr. V. K. Krishnankutty.
Dr. D. Raghavendra Rao.	,, T. K. Nayar.
Mr. K. Narayana Menon.	,, V. S. Krishnan Vaidyar.
,, K. Krishna Warriar.	,, P. Kumaran Ezhuthassan.
,, K. Ashtamoorthi Nambudiripad	,, K. Kunhirama Menon.
,, A. Eachara Menon.	,, K. M. Kunhi Moideen.
,, A. Narayana Menon.	,, V. K. Kutty.
,, M. Sivarama Menon.	,, K. S. Manickam.
,, Shabdai S. Koder.	,, Popatlal Goverdhan Lalan.
,, C. S. Viswanatha Ayyar.	,, T. A. Ramachandra Ayyar.
,, E. F. Norman.	,, K. S. Panickar.
Mrs. D'Souza Williams.	,, M. A. Sankunni.
,, Meenakshi N. Menon.	,, A. Sivarama Menon.
Mr. P. J. George.	,, P. C. Varkey.
	,, A. V. Moothedan.

Clause (b) was therefore lost.

Clauses (c), (d), (e) and (f) also were put and lost.
Clauses (g) and (h) and sub-section (2) were put and carried.

Mr. President.—From the Diwan's massage it will be seen that only if these clauses are retained in the Bill will the Bill receive His Highness' assent. In fact since clauses (b), (c), (d), (e) and (f) were put and lost the whole clause can be said to be put and lost. That is the position.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—After the re-numbered section 47, introduce the following as section 48 and renumber the following sections.—

"*48. (1) It shall be competent to the landlord of any holding to which Chapter III applies, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of michavaram, tax or other dues in respect of that holding.*

Provided that the arrears are not more than one year old on the date of the application and a demand in writing by registered anchal or post has been sent to the tenant for the payment of such arrears not less than seven days before the date of the application.

(2) *The application shall be in such form and shall contain such particulars as may be prescribed by the Diwan and*

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shall be signed and verified by the landlord in the manner prescribed by the Code of Civil Procedure, for the signing and verification of plaints.

(3) *The applicant shall from time to time pay to the Tahsildar such fees as may be prescribed by the Diwan for the several processes that may be necessary for realising the arrears. The applicant shall be entitled to a refund of any portion of such fees that may remain unexpended at the termination of the proceedings.*

(4) If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the tenant, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and interest and the fees paid under sub-section (3) by the applicant as if they were an arrear of land revenue due to Government and the provisions of the Revenue Recovery Act, IV of 1083, shall, Mutatis Mutandis, apply to all the proceedings.

(5) (a) The amount that is recovered shall be paid by the Tahsildar to the applicant on taking a receipt from him in a form as near as may be to that contemplated by section 39. (b) A copy of the receipt with the attestation of the Tahsildar shall be given free of cost to the tenant if he applies for it.

Explanation. Nothing in this section shall be deemed to bar the right of civil suit which any aggrieved party may have in law.

These provisions only relate to irredeemable kanom tenures. I have already explained this provision. No doubt it is new to Cochin but it is not altogether new. In the sister State of Travancore we have got it. The jenmikarom is more or less a similar arrangement. In the amending Act of 1108 the Government have taken the power to collect the dues due to jenmies under what is known as the jenmikarom arrangement. Several sections of this Regulation especially 26 A and the following section deal with this: "It shall be compent to the Jenmi of any holding, without prejudice to any other right of action that he may have, to make an application to the Tahsildar of the Taluk in which the holding is situated to recover the arrears of any Jenmi-karom in respect of that holding".

This is more or less a similar provision. No doubt it is over and above the other rights. This is conferring powers on

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the jenmi to collect dues expeditiously. This no doubt is an additional power but the question is whether that additional power is deserving seeing that his rights are substantially minimised by this legislation. In the meantime I would request the Hon'ble Members to consider this matter and pass this amendment.

Mr. K. P. Kannan Nayar *(Secretary to Government).*—I second it.

Mr. V. K. Krishnankutty *(Anthikad).*—Mr. President, Sir, of the three amendments which have been sought to be introduced, this is the worst and will do most harm to the tenants. The first amendment is a step forward from the existing state of affairs and the second amendment which we rejected keeps the status quo. The third amendment goes a step backward, takes a retrograde step, and gives the jenmi a status equivalent to that of the State. The State without difficulty collects its revenue through a summary procedure through its own officials, i. e., through the revenue officials. Now this amendment seeks to give the jenmi a status equivalent to that of the State. Then the tenant should also to be placed on the same par as the Pandaravaka Verumpattom tenants. That is, the tenants should be given absolute right to hold the property subject only to the liability to pay the michavaram. But here, the tenant is liable to be evicted. Under the Pandaravaka Verumpattom tenure, the Government tenants are never evicted. But to give an easy method of collection, the revenue department is helpful. Here, we have no absolute right of possession. At the same time the jenmi is given the easy method of collecting revenue through the machinery. Then why not employ this Government machinery for collecting all other dues payable by one man to another? Why not give mortgagees the power of collecting mortgage amounts through the Revenue Department? Our Land Mortgage Bank has been given the right to collect their dues through the Revenue Department. Why not give the other mortgagees also the same easy method to collect their mortgage amounts ? At any rate there is a difference existing between ordinary subjects and the State. Here the subject of the State is given the same power and authority as the State itself. We cannot tolerate such a power being given to the jenmies. The Hon'ble the Law Member was saying that from the tenants' view point also this is a necessary measure because it will teach the tenant habits of frugality and thrift. I am repeating the same expression of the Hon'ble the Law Member. But the tenants should survive these habits of frugality and thrift. The Tahsildar will

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do the function of collecting dues from one man to another. The function of the Court is sought to be ousted and the Tahsildar is to be installed instead. This is a procedure which is going too far and therefore I am constrained to oppose this amendment.

Mr. A. Narayana Menon *(Vyttila).*— I oppose this amendment. In fact this amendment is absolutely unnecessary in view of section 44 which reads thus :—" District Munsiffs may summarily try and dispose of suits by landlords for recovery of arrears of pattam, michavaram, renewal fee or other dues when the amount or value of the suit does not exceed Rs. 200.

Notwithstanding anything contained in the Court-fees Act, the court-fee payable on the plaint in such suits shall be the same as on an application when the arrears to be recovered have accrued due within 12 months of the date of the institution of the suit ....." Under this section, by the payment of 8 as. court-fee you get very cheap remedy; one of the amendments proposed also is to the effect that summary jurisdiction will be conferred upon the Munsiffs. There is no need for introducing this new section in the Bill. Again, by adopting this amendment, we are placing both the landlords and the tenants at the mercy of the village officers. The third reason for opposing this amendment is that you should not give all sorts of additional work to our low-paid village officers. The highest pay that a village officer gets is Rs. 25. Almost all of them are paid either Rs. 20 or much lower. The majority are paid Rs. 18, Rs. 12 also. Why should we give all this additional work to them? Then again, if there had been provision in this amendment to the effect that in view of the relief given to the jenmi and of his consequential gains in the reduction of his staffs, he is to get only 70 or 60 per cent of the collection, I could understand the change. The reduction granted graciously to Paliam tenants, takes away all the hardships so far as they are concerned. Would you allow similar concessions to all? Then I can agree. This 30 or 40 per cent should go to the tenant for making ready payments. Such practices are obtained elsewhere. By this amendment all the 16 as. in the rupee should go to the landlord. The cost of collection is also to be paid by the tenant. There is another difficulty. In some cases, Kanom dues and michavarom are to be paid in kind. Who is to fix the commutation price? Since there is summary jurisdiction conferred upon Court, within six months at the most, the jenmi will be able to realise his dues by a suit. I submit that this is a dangerous amendment sure to end in mischievous consequences. This is an unnecessary

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provision. So I am constrained to oppose this with all the vehemence I can command.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—There is an explanation to this amendment. May I know, Sir, what exactly is its meaning? It may kindly be explained.

Mr. President.—Mr. Ezhuthassan wants information about the explanation.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It means ordinary rights of suit. That is all.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Instead of going to the Tahsildar . . . . .

Mr. M. Sivarama Menon *(Ernakulam South).*—As it is the party is not prepared to accept that. Then he has to look to a Court of Law.

Mr. A. Sankara Menon *(Trippunithura).*—This provision was not in the Bill as passed by the Council. I consulted many of the tenants and they whole-heartedly spoke in favour of this amendment being passed. The only objection is one of sentiment that a new power is given to the landlord. That ought not to stand in the way of this provision being passed which is favourable both to the landlord and tenant. Here there are two important provisions which are sufficient to safeguard the interests of the tenant, namely a notice to be sent to him at least seven days before the application is made to the Tahsildar; then an application will be only for the recovery of arrears which became due within a year prior to the date of the application. These two provisions are sufficient to protect the interest of the tenant. If there is one way in which both the tenants and the landlords would not suffer, it is such a provision as this. If a suit is filed in the Munsiff's court, then there is the Vakil's fee and other charges to be paid. If these expenses are taken into account, it will be seen that the new provision is more in the interests of the tenant than the landlord. I therefore support this amendment.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Mr. President, Sir, this amendment which, according to the message of the Diwan remitting the Bill to the Council for reconsideration is intended to give relief to jenmies regarding the collection, of arrears of michavaram, if such arrears relate to the current year. What is stated in the message is that "section 44

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of the Bill as passed, does not appear to be reasonable. In view of the considerable restrictions imposed on the rights of the jenmies, some relief should be given to them in the matter of speedy realisation of the dues". That evidently is the body of amendment. Now let us look up to the position regarding jenmis' dues for one year. Here in section 44, it is said that to the extent of Rs. 200 the jenmi can sue the tenant in the Munsiff's court having jurisdiction over that area. It has further been stated in the same section that in suits for arrears within 12 months preceding the suit and when the amount does not exceed Rs. 200, he, the jenmi, need not pay any court fee except a fee prescribed for an application which now is 8 as. only. So far as this relief for one year's arrears is concerned, the Jenmi gets a right to go to the nearest Munsiff's court and make an application with 8 as. stamp and present the suit to the court. He need not pay court-fees at ad valorem rates. Such suits are laid down by the section to be tried as summary suits, the procedure adopted being the procedure laid down for the trial of small cause suits which is entirely different from the procedure laid down for the trial of original suits. He therefore gets speedier relief. That is the provision in section 44 and that section 44 is an improvement upon the corresponding section of the Act of 1090 which is section 32. According to the corresponding section in the Act of 1090 the Munsiff's court could entertain suits for arrears only up to Rs. 50 and for amounts over Rs.50 and is up to Rs. 200—the party concerned has to go to the District court. Now instead of that this section 44 gives him a right to sue the parties concerned in the Munsiff's court and he is exempted as before from the payment of Court-fees for the arrears for the current year. For all practical purposes therefore the jenmi who is alert in collecting his dues has a special remedy, a very cheap remedy, provided under section 44 of the Bill that has been passed. I fail to see why he should be given such a right as contemplated by the amendment for the realisation of his dues.

Mr. Thomas Manjuran *(Government Advocate and Law Officer).*—It is cheaper.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—I fail to see how it is cheaper except in the sense pointed out by the Hon'ble the Deputy President who stated that he wanted to know what exactly will be the fees that will be demanded for such a suit by brother Vakils of his.

Mr. A. Sankara Menon *(Trippunithura).*—I did not mean that.

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Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—He meant probably that a large amount of Vakil fee may have to be paid by the parties concerned in that suit. If the tenant engages a vakil to contest a suit for realisation of arrears of 12 months, the vakil will have to be paid surely. Most of us know what that is and how much it is and how it is paid.

Mr. K. S. Manickam *(Irinjalakuda).*—It varies.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*—Of course, it varies. It is not often that in such small matters like the suit for arrears of michavaram of one year in which in almost all cases there will be no contest and even if there is any contest, it is not likely a costly vakil will be approached by the tenant or the jenmi. I also fail to see how the remedy of realisation by the revenue recovery method becomes cheaper. Even according to the amendment, the jenmi has to pay for the recovery through the revenue authorities, because it is stated in clause (3) of the amendment: "The applicant shall from time to time pay to the Tahsildar such fees as may be prescribed by the Diwan for the several processes that may be necessary for realising the arrears". What is the amount that is prescribed and the jenmis will have to pay in the treasury to the Tahsildar? It is said that the Diwan in his rule making power will prescribe the fees. We do not now know what it will be. It will certainly be reasonable, that is all and not anything beyond that. The applicant shall be entitled to a refund of the amount that may remain unexpended at the termination of the proceedings. On the ground of cheapness, therefore, I do not think that the proposed amendment is going to help either the jenmi or the tenant to any material extent. Then as regards clause (4) of the amendment. It is in connection with that that I wanted to know the meaning of the explanation attached to the amendment in the end. And the explanation has been given upon that explanation here. Clause (4) runs: "If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the tenant, etc." If that is satisfied, I have no quarrel with the first part of this clause. But what about what follows, viz. that the Tahsildar is satisfied that the arrears are due from the tenant? Are we to understand that he is to go through the processes that are undergone in a Civil Court if it is the desire of the tenant to contest the claim of the jenmi? Are we to understand that the procedure regarding the evidence, or proof of the amount being due or the amount being discharged has to be gone through before the Tahsildar? If the answer to that query is 'yes' then the question

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of the engagement of the vakil which was adverted to by the Hon'ble the Deputy President arises here also. Nobody says that before a Tahsildar a vakil shall not be engaged for proving the case of a party, and there is nothing in this amending provision preventing the parties from doing so. So on the question of cost, if it is intended that the parties have to prove their case before the Tahsildar, the question of the engagement of vakils comes in there also.

And, Sir, the fun of it is that instead of that work of adjudication of an amount being due or not due being left in the hands of seasoned and experienced judicial officers, if this amendment is to be carried, that has to be given into the hands of executive officers of the type of a Tahsildar who at times is not a gentleman experienced in Law. Look at the very many Tahsildars that we have today. A good many of them are not Graduates in Law. I do not for a moment say that for adjudication of such matters graduates in law are absolutely necessary. But I would say that if a matter of this sort is to be properly adjudicated, a judicial officer will be a better officer than the executive officer of the type of a Tahsildar. If this amendment is to be carried, it is in a way usurping the functions of a judicial officer and I have no quarrel for such usurpation, if the usurpation is utilised to any advantage of any of the parties concerned, though we can certainly expect to get better justice at the hands of a judicial officer than at the hands of an executive officer. I mean no disparagement to any executive officer of the Revenue Department. And the processes that are resorted to by the revenue recovering authorities for the recovery of the revenues that fall upon the properties, of course, are well-known. Often-times the cry has been heard in this House through questions, cut-motions and other methods allowed by the Legislative Council enactment regarding the harshness of coercive steps taken by them. We see objection taken to the coercive processes generally resorted to by the revenue recovering authorities as far as collection of tax itself is concerned. Now we are going to hear hereafter an additional story regarding the coercive processes taken out by the revenue authorities regarding the collection of dues for private parties like the jenmies. I ask why the Government goes in for this work for them. What exactly is the advantage except that, as stated by the Hon'ble Law Member while he was at the former amendment, it is a case of an over-anxiety to do justice by the side of the jenmi on the feeling that the Hon'ble Members of this House except the jenmies' representative are of the tenant's persuasion?

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If it is the question of speedy realisation section 44 will help the jenmi. If it is a question of cheapness, section 44 again gives him cheapness. As I submitted before, more than anything else, here is a case in which the functions of a judicial officer are to be exercised by an executive officer which is not a thing which should be encouraged. For these reasons, Sir, I oppose the amendment.

* **Mr. A. Sivarama Menon** *(Mulakunnathukavu).*— Mr. President, Sir, I do not find in this amendment any mischief or any danger that has been adverted to by the Hon'ble Member for Wadakkancheri or the Hon'ble Member for Vyttila. I realise, Sir, this is a provision which gives an additional remedy for the realisation of dues that are legitimately due to the jenmies. It may perhaps be argued that when a summary procedure has already been prescribed in the Statute for the easy and speedy realisation of the jenmies' dues, whether there is any real necessity for adding to such a speedy remedy. For my part, the only objection that I see is on this score, viz., that as the Hon'ble Law Member has already admitted it is an additional remedy to the one that already exists for the due and easy realisation of the jenmies' dues. But at the same time, I cannot find any reasonable objection if the Government are prepared to use revenue officers in the interests of realising dues to an important section of the subjects. If the Government are prepared to use the revenue officers for this additional work, for my part I can see no objection on the part of the tenants as long as they are prepared to pay their dues in time and that regularly. It has to be remembered, Sir, that this amendment deals with yearly dues only. I take it that no one in the position of a tenant can stand up in this House and say that any sort of obstacle ought to be placed before any jenmi or that any one standing in the position of a jenmi in regard to realising the legitimate dues. It was admitted to be a necessity by all parties including the tenants' representatives that departing from the usual procedure of an ordinary original suit, we should agree to the provision being made for summary realisation by a summary suit. Certainly this further extension by way of additional remedy through the intervention of revenue officers is a beneficial measure. They need not incur the additional expenditure involved for civil litigation. As far as the tenants are concerned, I say this is an additional advantage to them in this way. This is a mild pressure on them for making them pay their dues regularly.

* Speech not corrected by the Hon'ble Member.

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So far as I can see, there is no substance in the observation that judicial officers are the proper persons—judicial officers in the sense of Munsiffs and so on—to deal with such matters. If that were the case, I find our position is very remarkable that very important questions involving very large amounts are being considered by revenue authorities. There is no reason for any fear whatever that there will be any miscarriage of justice if this matter is entrusted to revenue officials. They are entrusted with far more important and difficult work in matters connected with land revenue and so on. For this reason, I do hope that the tenants' representatives and the House as a whole will agree to this amendment being passed at least to show that we are not here to throw any obstacle in the way of the land-lord realising his dues. On the other hand, we are anxious to see that the legitimate dues payable to him by the tenants should be made available to him in the speediest manner possible and with the least expenditure. I therefore heartily support this amendment.

* മിസ്റ്റർ കെ. അയ്യപ്പൻ (*Ezhuvas South*).— സർ, ഇതേവരെ പറഞ്ഞിട്ടുള്ള അഭിപ്രായങ്ങളിൽനിന്ന് ഈ ഭേദഗതിക്ക് എതിരു പറയുന്നവരുടെ ഉദ്ദേശം മനസ്സിലാക്കീട്ടില്ലെന്നു തോന്നുന്നു. എളുപ്പം വരുത്തുകയും പ്രയാസം കുറക്കുകയും ചിലവു കുറക്കുകയും എല്ലാം ചെയ്യുന്ന സംഗതിയല്ല ഇതിൽ പ്രധാനമായി നോക്കാനുള്ളതു്. ഇതുകൊണ്ടു ഇരട്ടി കേസാണ് വരുന്നതു്. ഇതിലൊന്നും അർത്ഥമില്ല. ഈ വക കാര്യങ്ങളിൽ ഒരു ജന്മിയും തഹസീൽദാരും ടെനൻറും തമ്മിലുള്ള ബന്ധത്തിൽ ഒരു ജന്മിക്കു കിട്ടുന്നിടത്തോളം ആനുകൂല്യം ഒരു ടെനൻറിന് ഈ രാജ്യത്തെ സ്ഥിതിക്കു കിട്ടുന്നില്ലെന്നു തുറന്നു സമ്മതിക്കാതെ നിവൃത്തിയില്ല. അതുകൊണ്ടു അനീതിനടക്കുന്നു എന്നാണ് ഞാൻ പറയുന്നതു്. സാധാരണ ജന്മികളുടെ ആളുകളാണ് തഹസീൽദാരും മറ്റുമാകുന്നതു്. ജന്മികളുടെ സ്വാധീനശക്തി അത്ര വലിയതാണ്. അങ്ങിനെയുള്ള സ്ഥിതിഗതികളിൽ കോടതിയിൽ പോകുന്നതുകൊണ്ടു വലിയ പ്രയാസമുണ്ടാകുന്നതല്ല. ഒരു ജന്മിയോടു തഹസീൽദാർ കാണിക്കുന്ന ആനുകൂല്യം ഒരു ടെനൻറിനോടു കാണിക്കുമോ എന്നു് ആലോചിക്കണം. ഒരു ജന്മിക്കു താസീൽദാരെ പ്രേരിപ്പിക്കുവാൻ സാധിക്കുന്നിടത്തോളം ഒരു ടെനൻറിനു താസീൽദാരെ സ്വാധീനിക്കുവാൻ സാധിക്കുമോ എന്നാണ് നോക്കേണ്ടതു്. നിയമം പ്രവൃത്തിക്കുന്ന ആളുകൾ ദുഷ്ടന്മാരായിരുന്നാലും ആക്കും ദോഷം വരാത്ത സ്ഥിതിയിലായിരിക്കണം നിയമം ഉണ്ടാക്കേണ്ടതു്. നിയമശാസ്ത്രം അങ്ങിനെയാണെന്നാണ് എനിക്കു തോന്നുന്നതു്.

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* Speech not corrected by the Hon'ble Member.

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അതുകൊണ്ട് ഇവിടെ സംശയം വരുന്നതു് താസിൽദാർ ജന്മിയുടെ ഭാഗം നിന്നുപോകും; അതുതന്നെ ടെനൻറിന്റെ ഭാഗത്തു നില്ക്കയില്ല എന്നുള്ളതിലാണു്. ഇതുകൊണ്ടു് ഇപ്പോഴത്തെ നിയമം സദുപയോഗപ്പെടുത്തുന്നതിനേക്കാൾ ദുരുപയോഗപ്പെടുത്തുകയാണു് ചെയ്യുന്നതു്. അതുകൊണ്ടു ഞാൻ ഇതിനെ എതിർക്കുന്നു.

* മിസ്റ്റർ ടി. കെ. നായർ (*Pazhayannur*).— സർ, ജന്മി കുടിയാൻ കായ്ത്തിൽ ഒരു നിയമം ഉണ്ടാക്കുന്നതായ അവസരത്തിൽ ബഹുമാനപ്പെട്ട ലാ മെമ്പർ പറഞ്ഞ മാതിരി ഈ നിയമസഭയിൽ ജന്മിഭാഗത്തെ പ്രതിനിധീകരിക്കുവാൻ ഒരു ജന്മി മെമ്പർ മാത്രമേയുള്ളൂ; ബാക്കിയുള്ള ആളുകൾ കുടിയാൻ ഭാഗത്താണെന്നുള്ള വസ്തുത വാസ്തവമാണു്. എന്നിരിക്കിലും ഞാൻ ജന്മിഭാഗത്തുമില്ല കുടിയാൻ ഭാഗത്തുമില്ല. ഒരു നിയമമുണ്ടാക്കുന്ന അവസരത്തിൽ നിയമസംബന്ധമായ യാതൊരു പരിചയവുമില്ലാത്ത ഞങ്ങൾ ചില കോമൺ സെൻസ് വ്യൂസ് വെച്ചുനോക്കുന്ന പരിവാണു് ഞങ്ങൾ ഇതേവരെ അനുഷ്ഠിച്ചുവന്നിട്ടുള്ളതു്. ജന്മി കുടിയാൻ കായ്ത്തിൽ ഒരു നിയമമുണ്ടാക്കുമ്പോൾ ജന്മി ഭാഗത്തെ പ്രതിനിധികൾ അധികമില്ലാത്ത സ്ഥിതിക്കു ജന്മികൾക്കു വേണ്ട സകല അധികാരാവകാശങ്ങളും വച്ചുകൊടുക്കണമെന്നു പറയുന്നതു് ശരിയാണു്. ഒരു കാണക്കുടിയാന്നു് ഫസ്ല കൊല്ലം കഴിഞ്ഞാൽ പൊളിച്ചെഴുത്തവകാശം എന്താണെന്നു നിശ്ചയിക്കുക; മിച്ചവാരം നികുതി മുതലായവ ന്യായമായി പിരിക്കുവാനുള്ള ജന്മാവകാശം നിയമപ്രകാരം കൊടുക്കുക; ജന്മിക്കു അത്യാവശ്യമായ ചില സന്ദർഭങ്ങളിൽ കാണവസ്തുക്കൾ ഒഴിഞ്ഞുകിട്ടണമെന്നു പറയുമ്പോൾ നിയമതടസ്ഥം കൂടാതെ അതിന്നു് സൌകര്യമുണ്ടാക്കികൊടുക്കുക; ഇതുമെല്ലാം ചെയ്തുകഴിഞ്ഞാൽ ജന്മിയുടെ പ്രധാന കായ്ങ്ങളെല്ലാം നോക്കി എന്നാണു് എനിക്കു തോന്നുന്നതു്. ഇതെല്ലാം ചെയ്തുകഴിഞ്ഞതിനുശേഷവും ജന്മികളുടെ പ്രതിനിധികൾ ഇല്ല എന്നു പറയുന്നതിൽ ഒരർത്ഥവുമില്ല. പ്രധാനമായിട്ടു രണ്ടു കക്ഷികളേയും സമമായിട്ടാണു് ഗവൺമെൻറു വീക്ഷിക്കേണ്ടതു്. ഇവിടെ കൊണ്ടുവന്നിട്ടുള്ള ഭേദഗതിയിൽനിന്നു് തീർച്ചയായിട്ടും ഇങ്ങിനെ ഒരു സമദൃഷ്ടിയോടുകൂടി നമ്മുടെ ഗവൺമെൻറു വീക്ഷിക്കുന്നില്ലെന്നു വെളിവാകുന്നുണ്ടു്. ഈ ബില്ലിൽ 8-ാം വകുപ്പിൽ മിച്ചവാരം, പാട്ടബാക്കി മുതലായതുണ്ടെങ്കിൽ അതു പിരിച്ചെടുക്കുവാനുള്ള സകല സൌകര്യങ്ങളും ചെയ്തുകൊടുക്കുന്നുണ്ടു്. ഒരു സംഖ്യ കാണക്കുടിയാൻ ജന്മിക്കു കൊടുക്കുവാനുണ്ടോ ഇല്ലയോ എന്നു തീർച്ചയാക്കുന്നതിനു മുമ്പു്—തീർച്ചയാക്കിയതിനു ശേഷമാണെങ്കിൽ വിരോധമില്ല—ഒരു ജന്മി ഒരു പെറ്റീഷൻ താസീൽദാക്കു കൊടുത്താൽ താസീൽദാരുടെ തീർപ്പിന്മേൽ ഗവൺമെണ്ടിൽനിന്നു വസൂലാക്കാനുള്ള അധികാരമുണ്ടു്. അദ്ദേഹത്തിനു ഈ അധികാരം കൊടുത്തിട്ടുള്ളതിനാം

* Speech not corrected by the Hon'ble Member.

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പുറമെ വട്ടം വരുന്നുണ്ട്. താസിൽദാരുടെ തീരുമാനം എന്തെങ്കിലും ആയിക്കൊള്ളട്ടെ. രണ്ടു കക്ഷികൾക്കും ന്യായമായി കോസിനു പോകാൻ വിരോധമില്ല. നിയമസംബന്ധമായ പരിചയമില്ലാത്ത ഞങ്ങളിൽ ചിലരുടെ ബുദ്ധിയിൽ ഇതു വളരെ അന്യായമായിട്ടാണ് തോന്നുന്നത്. ജന്മികൾക്കു വേണ്ടതായ സകല അധികാരങ്ങളും വച്ചുകൊടുക്കേണ്ടതു് അത്യാവശ്യമാണ്. അല്ലാത്തപക്ഷം, ചുരുക്കത്തിൽ ഗവൺമെൻറിനു അതുമാത്രം ജന്മികളോടു അനുഭാവമുള്ള പക്ഷം, ഇതുയും ബുദ്ധിമുട്ടിച്ചിട്ടു കാര്യമില്ല. നിയമങ്ങൾ ഉണ്ടാക്കുമ്പോൾ രണ്ടു ഭാഗവും നോക്കേണ്ട ചുമതല ഗവൺമെൻറിനുണ്ട്. ജന്മികൾക്കു പണം കൊടുക്കാനുണ്ടെങ്കിൽ അതു മുഴുവൻ പിരിച്ചെടുക്കുവാൻ റവന്യൂ ഡിപ്പാർട്ടുമെൻറിൽനിന്നും സഹായിക്കണമെന്നില്ല. അതുകൊണ്ടു ഇതു പാസായാലും ഇല്ലെങ്കിലും ശരി, ഇതിനെ സംബന്ധിച്ചു ഗവൺമെൻറിന്റെ നയം വളരെ ശരിയാണെന്നു ഞങ്ങളിൽ ചിലർക്കു തോന്നുന്നില്ല. ജന്മികൾക്കു കിട്ടുവാനുള്ളതു ശരിയായിട്ടു കിട്ടേണ്ടതാണ്. അതിനെ അതും തടസ്സം ചെയ്യുന്നില്ല. ജന്മികൾക്കു വ്യവഹാരച്ചിലവു വന്നാൽ അതു കൂടിയാൻ കൊടുക്കണം. അതല്ലാതെ ഇതിനെ സംബന്ധിച്ചു ഒരു നിയമം ഉണ്ടാക്കണമെന്നു എനിക്കഭിപ്രായമില്ല. അതുകൊണ്ടു ഞാൻ ഇതിനെ ബലമായി എതിർക്കുന്നു.

Mr. T. S. Balarama Ayyar *(Trichur North).*— Mr. President, Sir, to me, the point covered by this argument seems to belong to that class upon which much can be said on both sides. The advantages have certainly been brought to the notice of the House by the Hon'ble Member for Mulakunnathukavu and also by the Government Law Member. There appears to be very serious disadvantages also. In the first place, if the amendment is carried, I am afraid the smooth relationship that now exists in most cases between the landlord and the tenant may be disturbed. Failure to pay michavaram can in most cases be traced to the difficulty to pay. Failure to pay in most cases is not a deliberate omission to pay. The difficulty involved in litigation is a point which the landlord takes into consideration in coming to some sort of amicable settlement with the tenant in the matter of michavaram to be paid. A sort of give and take policy is adopted and the matter is settled amicably between them. But now if the amendment is carried the landlord will find that he has got an easier method of recovering the arrears from the tenants. In ninety nine per cent of the cases, you may depend upon it, the landlord will not be inclined to forego any portion of what he is rightly entitled to, because in his case, there will be absolutely no difficulties involved in litigation. That is one of the points against the amendment.

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Another point, I am afraid, is that the work of the Tahsildars will be considerably increased. Just as we have recourse to the appointment of additional Judges, I am sure, Government will have to resort to the appointment of additional Tahsildars. These are the disadvantages. But, as I said, I am certainly not blind to the advantages which the amendment will confer. I have really not made up my mind whether I should vote for or against the amendment.

Mr. K. Ashtamoorthy Namboodiripad *(Landlords).*— In my opinion, this is a very necessary amendment. It is beneficial both to the Jenmi as well as to the tenant. As ably put by the Deputy President, the objections seem to be only in the sentiment. As regards the Jenmies they are able to collect the arrears expeditiously and as regards tenants they are not liable to exorbitant costs. So I support the motion.

* മിസ്റ്റർ ടി. എ. രാമവാര്യർ (*Nellayi*).— സർ, ജന്മികൾക്കും കുടിയാന്മാർക്കും പുറമെ വേറെ ഒരു ക്ലാസ്സ് കൂടിയുണ്ട്. അതായത് ഒരു കാണക്കുടിയാനെ തന്റെ വസ്തുവിൽനിന്ന് മിച്ചവാരബാക്കിക്കുവേണ്ടി ഒഴിപ്പിക്കാൻ വിചാരിക്കുന്നു. ഈ മിച്ചവാരം കൊടുക്കേണ്ട സംഖ്യ കാണക്കുടിയാന്റെ പക്കൽനിന്ന് റവന്യൂ റിക്കവറി ആക്ട്പ്രകാരം പിരിച്ചെടുക്കുന്നു. കാണക്കുടിയാനു തന്റെ കീഴിലുള്ള പാട്ടക്കാരിൽ നിന്ന് കോടതി മുഖാന്തിരമല്ലാതെ പാട്ടം പിരിച്ചെടുക്കുവാൻ തരമില്ല. ഇതുകൊണ്ടു കാണക്കുടിയാനു വളരെ ഉപദ്രവം നേരിടുന്നുണ്ട്. ഇതിനുപുറമെ ഗവൺമെണ്ടിലേക്കു ജന്മികളുടെ അധികാരം വച്ചുകൊടുത്താൽ വളരെ വൈഷമ്യമുണ്ട്. പാലിയം ഗവൺമെൻറു ഏറ്റെടുത്തതിനു ശേഷം അവരുടെ കുടിയാന്മാർ വളരെ സന്തോഷിക്കുന്നു എന്നു ഇവിടെ പറയുകയുണ്ടായി. ഈയ്യിടെ പാലിയം മാനേജരുടെ പക്കൽനിന്നു എനിക്കു ഒരു നോട്ടീസ്സു കിട്ടി. അതിൽ "ഫ്രാവ്യൽ നിങ്ങൾ കുടിമാവു മുറിച്ചതായി അറിയുന്നു. ഇതിനുള്ള സംഖ്യ റവന്യൂ റിക്കവറി റഗുലേഷൻപ്രകാരം നിങ്ങളുടെ പക്കൽനിന്നും വസൂലാക്കുന്നതാകുന്നു" എന്നു പറയുന്നു. ഫ്രാവ്യ-ൽ മാവു മുറിച്ചതായിട്ടു എനിക്കു ഓർമ്മയില്ല. അതിനു യാതൊരു തെളിവും ശേഖരിക്കാതെയാണ് സംഖ്യ പിരിക്കുവാൻ പോകുന്നു എന്നു പറയുന്നതു്. ഇതുപോലെ ജന്മികളുടെ അധികാരം സർക്കാരിനെ ഏല്പിച്ചുകൊടുത്താൽ വസ്തുവിൽ വിളവുണ്ടായിട്ടുണ്ടോ എന്ന് നോക്കാതെ അവർ ഈ അധികാരം ചെലുത്തി സംഖ്യ വസൂലാക്കുന്നതാണ്. ഇതു വളരെ കഷ്ടമായിട്ടുള്ള ഒരു സംഗതിയാണ്. അതുകൊണ്ടു ഈ അധികാരം ഒരിക്കലും താസീൽദാരന്മാരെ ഏല്പിച്ചുകൊടുക്കുവാൻ പാടില്ലെന്നാണ് എന്റെ അഭിപ്രായം.

* Speech not corrected by the Hon'ble Member.

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* **Mr. C. R. Iyyunni** (*Trichur South*).—The power that is going to be given to the Tahsildar is one which he is to use without taking any local evidence whether there are any arrears on the property. The section reads thus:—"If the Tahsildar is satisfied that the application has been duly presented, that the arrears are due from the tenants, that the applicant is entitled to recover them and that they are not more than one year old on the date of the application, he shall proceed to recover the amount of the arrears and the interest." This does not cast any duty upon the Tahsildar to make an investigation, as in the procedure that is adopted by Courts of Law, whether there are really arrears on the property. Not only that, the person from whom the arrears have to be collected does not get any notice whatever whether the Jenmi has put in an application like this. That means that the Tahsildar to whom the application has been presented does not go into the merits of the question and he passes an exparte order that such and such amount is due from the tenant and coercive steps are taken. Suppose an exparte order has been passed by the Tahsildar and that coercive steps have been taken against the tenants. What are the coercive steps? The attachment of all movable and immovable properties and things like that. In such circumstances the tenant will not be in a position to defend the case. What is he to do? He has to borrow money at an exorbitant rate of interest from moneylenders and pay the amount due to the Jenmi. If the amount has been paid to the Tahsildar it will be very unlikely for the tenant to go to a court of law and say that no arrears are due to the Jenmi. In such circumstances certainly it will be causing a very great hardship upon the tenant if he is asked to go to a Court of Law to establish his right instead of asking the Jenmi who is in affluent circumstances to go to a Court of Law. Ordinarily the ryots are poor. After paying the dues that are payable to the Jenmi, if you ask for a receipt for the michavarom or whatever is paid, the man will not give even a receipt. There are thousand and one cases like this. Of course people who know something of what is happening in Courts will know that there are any number of written statements as follows "I paid the amount. The Jenmi refused to give me a receipt for the amount that I paid." There will be this sort of difficulties cropping up and if this power is handed over to the Tahsildars at the instance of the Jenmi certainly the condition of the tenants will be very hard. Such a provision should not be introduced here. Not only that, there is one other matter that I wish to say. It is stated here "to make an

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application to the Tahsildar of the Taluq in which the holding is situated to recover the arrears of michavarom, tax or other dues in respect of that holding". What are those other dues? There may be so many other things. It may be the cutting of a mango tree as Mr. Ramachandra Ayyar put it. Certainly the Tahsildar will not institute an enquiry as a Court of Law. Why should the Jenmi be shown a favour especially when under normal circumstances he belongs to the richer classes and the tenant belongs to the poorer classes? With regard to the matter whether the Jenmi should be helped by the Government in the matter of realising the tax, very probably, Government may help the Jenmi to realise the tax as is done for the realisation of Crown dues from the landlord. There are so many dues which the Jenmi has to pay to the Government. The Government may help the Jenmi to collect such dues. The power of realising michavarom and other dues that are due from the tenant should not be granted at all.

Mr. Thomas Manjuran *(Government Advocate and Law Officer)*.—Sir, I do not wish to make a long reply at all. I find that both aspects of the question have been exhaustively argued. But I only wish to say one or two words in regard to the alarmist fears that were expressed here. This is, no doubt, as I stated in beginning, an additional power—a power that did not exist upon the Statute Book of Cochin. But that does not mean that it is either unnecessary or uncalled for or unfair. What I stated was that in view of the several sacrifices that the jenmi has to make if this legislation is passed by this House, the Government think it only proper that the jenmy should expeditiously and cheaply collect his dues. Again, he has his own obligations. What about the tax that he has to pay to the Government? One Hon'ble Member, though he did not say that, probably wants to say that Government want to facilitate their collection of taxes. He did not say that, but I thougt he was going to say that. Such a suggestion is altogether baseless, because Government have as much facility to collect it from the jenmies as from the tenants. The Hon'ble Member should know that every bit of land which has been the subject of taxation is first charge for Government tax, so that Government is absolutely indifferent as to in whose possession the lands may be. It is again the tenant who will suffer. Generally lands are leased out on pattom or kanam. Whatever that may be, when it comes to selling, it will be the tenant's land that will be sold. So, that argument will not hold water. Considering all the aspects of the situation most of which have been put forward by either

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one side or the other of the House, it appears to the Government to be fairly clear that in the absence of such powers of expeditiously and cheaply collecting the dues of the jenmies, the jenmies are liable to be put to very serious difficulties. As I have explained in the forenoon, it may perhaps be a blessing for tenants to have some such provisions of law. For one thing, they won't have occasion to accumulate arrears. For another they will acquire the habit of spending only the balance left after paying off the jenmies' dues. It cannot be said that the Bill is going to result in any serious hardship to any honest tenant who wants to pay the jenmi's dues. Some fear was expressed with regard to the decisions to be arrived at by the Tahsildar. One Hon'ble Member went to the extent of saying that it is meaningless, if not extravagant, to provide for a suit after the Tahsildar has arrived at a decision. I am afraid that the Hon'ble Member has not thought about the implications of the statement. That proviso is intended to provide for the possible miscarriage of justice by the Tahsildar. The Thasildar makes a summary enquiry whether rent is due form a particular tenant for the current year. Suppose that decision is perchance wrong. should the tenant go without relief? It is only to cover such cases that that provision is made. In 99 per cent cases of interference by Tahsildars there is tangible evidence of the tenancies. After all, it is only the existence of tenancies that have to be proved. Suppose it is a tenancy under a registered document. The tenant has only to produce the receipt for the rent paid for the current year. It is not a question of hunting up of old records. There need not be any fear. It is only for the tenant who never wants to pay, who wants to accumulate arrears and who wants to go to the Debt Conciliation Board that will have to fear. Without going further into the matter, I would request Hon'ble Members to vote for this amendment which is just, equitable and fair.

Amendment was put and agreed to.

Mr. P. Kumaran Ezhuthassan *(Wadakkancheri).*— Poll, Sir.

POLL.

Ayes.	Noes.
Mr. K. Achyuta Menon.	Mr. K. Ayyappan.
,, V. K. Achyuta Menon.	,, T. S. Balarama Ayyar.
,, V. K. Aravindaksha Menon.	,, K. M. Ibrahim.

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Ayes	Noes
Mr. K. Ashtamoorthi Nambudiripad.	Mr. T. C. Iyyukutty.
,, A. L. Devassy.	,, C. R. Iyyunni
,, P. J. George.	,, T. K. Nayar.
,, K. P. Kannan Nayar.	,, V. K. Krishnankutty.
,, K. Krishna Warriar.	,, P. Kumâran Ezhuthassan.
Mrs. Meenakshi N. Menon.	,, K. Kunhirama Menon.
Mr. I. N. Menon.	,, K. S. Manickam.
,, K. Narayana Menon.	,, A. Narayana Menon.
,, T. Narayana Menon.	,, T. A. Ramachandra Ayyar.
,, E. F. Norman.	,, K. S. Panickar.
Dr. D. Raghavendra Rao.	,, M. A. Sankunni.
,, A. R. Poduval.	,, A. V. Moothedan.
Rama Varmha Tampuran.	
Mr. A. Sankara Menon.	
Mrs. D'Souza Williams.	
Mr. A. Sivarama Menon.	
,, M. Sivarama Menon.	
,, Thomas Manjuran.	
,, P. C. Varkey.	

Amendment was therefore carried.

The House rose for the day at 5 p. m.

B. V. KRISHNANKUTTY MENON,
Secretary to the Council.

APPENDIX.

Minutes of the Standing Finance Committee Meeting.

Monday, the 7th Vrischigam 1113. / 22nd November 1937.

Present.—

M. R. Ry. K. Achyuta Menon Avl., B. A. B. L., Diwan Peishkar, Chairman.

,, K. P. Kannan Nayar Avl., B. A., B. L., Secretary to Government.

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